Supreme Court, U.S.
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In The
Supreme Court of the United States

CASINO ASSOCIATION OF LOUISIANA, INC.,

Petitioner,

v.

STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, GOVERNOR, AND THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a State, consistent with the First Amendment, may prohibit all political contributions by certain entities and individuals and their spouses because of their association with a single industry.

PARTIES TO THE PROCEEDINGS

Petitioner is the Casino Association of Louisiana, Inc., on behalf of itself and its individual members. The respondent is the State of Louisiana, through the Honorable Murphy J. Foster, Jr., Governor, and the Honorable Richard P. Ieyoub, Attorney General. In the court below, Treasure Chest Casino, L.L.C., Harrah's Operating Company, Inc., and Harrah's Entertainment, Inc. were intervenors.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner Casino Association of Louisiana, Inc. ("Association") has no parent corporation nor does any publicly held company own 10% or more of its stock. Petitioner has nine stockholders, each of which is a non-publicly held company that owns an equal share of the Association. Certain of the Association stockholders are owned by the following publicly held companies, each of which thereby indirectly owns 10% or more of Petitioner's stock: Boyd Gaming Corp.; Pinnacle Entertainment, Inc.; Argosy Gaming Co.; Penn National Gaming, Inc.; and Isle of Capri Casinos, Inc.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
RULE 29.6 CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT	4
1. The 1996 Enactment of the Louisiana "Campaign Statute"	4
2. The Louisiana Supreme Court Invalidates the Campaign Statute for the Video Poker Industry in 1999, Then Upholds It for the Casino Industry In 2002	7
REASONS FOR GRANTING THE PETITION	12
1. Louisiana's Selective Ban on Contributions Cannot Be Reconciled With the First Amendment	13
(a) A Flat Ban On Political Contributions Is Subject To The Most Exacting Review	14
(b) The Statute Is Not Closely Drawn To Justify a Ban Singling Out One Industry	18

TABLE OF CONTENTS – Continued

Page

2. The Spread of Selective Contributions Bans, and Inconsistent Rulings on Their Constitutionality, Warrant Review by This Court 23

CONCLUSION 27

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page

CASES

44 Liquormart v. Rhode Island, 517 U.S. 484 (1996) 9, 17, 18

Agnew v. State, 446 A.2d 425 (Md. 1982) 21

Beaumont v. FEC, 278 F.3d 261 (4th Cir. 2002) 26

Buckley v. Valeo, 424 U.S. 1 (1976) ..... *passim*

California Democratic Party v. Jones, 530 U.S. 567 (2000) 16

Casino Association of Louisiana v. Louisiana, 820 So. 2d 494 (La. 2002) 1, 9

Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996) 14

Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994) 26

Fair Political Practices Commission v. Superior Court, 599 P.2d 46 (Cal. 1979) 25

FEC v. Colorado Republican Federal Campaign Committee, 533 U.S. 431 (2001) 14

FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) 15

FEC v. National Conservative Political Action Committee, 470 U.S. 480 (1985) 16

Greater New Orleans Broad. Association, Inc. v. United States, 527 U.S. 173 (1999) 19, 23

Gwinn v. State Ethics Commission, 426 S.E.2d 890 (Ga. 1993) 26

Hill v. Colorado, 530 U.S. 703 (2000) 15, 17

TABLE OF AUTHORITIES – Continued

Page

Illinois ex rel. Ryan v. Brown, 227 F.3d 1042 (7th Cir. 2000) 22

Institute of Governmental Advocates v. Fair Political Practices Commission, 164 F. Supp. 2d 1183 (E.D. Cal. 2001) 25

Kimbell v. Hooper, 164 Vt. 80, 665 A.2d 44 (Vt. 1995) 25

Kusper v. Pontikes, 414 U.S. 51 (1973) 16

Leslie Bonano, Inc. v. Louisiana, 01-1912 (La. App. 1st Cir. 06/21/02), 822 So.2d 1044 6

Mammoth Oil Co. v. United States, 275 U.S. 13 (1927) 21

May v. United States, 175 F.2d 994 (D.C. Cir. 1949) 21

Nebraska Press Association v. Stuart, 427 U.S. 539 (1976) 17

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 13

Nixon v. Shrink Mo. Government PAC, 528 U.S. 377 (2000) ..... *passim*

North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705 (4th Cir. 1999), *cert. denied*, 528 U.S. 1153 (2000) 25, 26

Penn v. State ex rel. Foster, 751 So. 2d 823 (La. 1999), *cert. denied sub nom. Louisiana v. Penn*, 529 U.S. 1109 (2000) ..... *passim*

In re Petition of Soto, 236 N.J. Super. 303, 565 A.2d 1008 (App. Div. 1989), *certif. denied*, 121 N.J. 608, 583 A.2d 310, *cert. denied*, 496 U.S. 937 (1990)) 10, 25

TABLE OF AUTHORITIES – Continued

Page

R. A. V. v. St. Paul, 505 U.S. 377 (1992).....17, 18

Rosenberger v. Rector & Visitors of University of Virginia, 515 U.S. 819 (1995).....17, 18

Rubin v. Coors Brewing Co., 514 U.S. 476 (1995).....23

Schiller Park Colonial Inn v. Berz, 349 N.E.2d 61 (Ill. 1976).....25, 26

Schneider v. New Jersey, 308 U.S. 147 (1939).....15

Service Employees International Union v. Fair Political Practices Commission, 955 F.2d 1312 (9th Cir. 1992).....26

State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), *cert. denied*, 528 U.S. 1153 (2000).....25

Twin B. Casinos, Inc. v. Louisiana, 00-1681 (La. App. 1st Cir. 09/28/01), 809 So.2d 995..... 7

United States v. Barber, 668 F.2d 778 (4th Cir. 1982).....22

United States v. Biaggi, 853 F.2d 89 (2d Cir. 1988).....21

United States v. Blanton, 719 F.2d 816 (6th Cir. 1983).....22

United States v. Brown, No. 01-30173, 2002 WL 1967502 (5th Cir. Aug. 23, 2002).....21

United States v. Caldwell, 544 F.2d 691 (4th Cir. 1976).....22

United States v. Carroll, 860 F.2d 500 (1st Cir. 1988).....21

United States v. Coon, 187 F.3d 888 (8th Cir. 1999).....21

United States v. DeVegter, 198 F.3d 1324 (11th Cir. 1999).....22

TABLE OF AUTHORITIES – Continued

Page

United States v. Dischner, 974 F.2d 1502 (9th Cir. 1992) 21

United States v. Evans, 30 F.3d 1015 (8th Cir. 1994) 21

United States v. Evans, 192 F.3d 698 (7th Cir. 1999) 22

United States v. Glantz, 884 F.2d 1483 (1st Cir. 1989) 21

United States v. Griffin, 154 F.3d 762 (8th Cir. 1998) 22

United States v. Hyde, 448 F.2d 815 (5th Cir. 1971) 21

United States v. Jackson, 209 F.3d 1103 (9th Cir. 2000) 21

United States v. Kinter, 235 F.3d 192 (4th Cir. 2000), *cert. denied*, 532 U.S. 937 (2001) 21

United States v. Krilich, 257 F.3d 689 (7th Cir. 2001), *cert. denied*, 122 S. Ct. 1175 (2002) 21

United States v. Margiotta, 688 F.2d 108 (2d Cir. 1982) 21

United States v. Milan, No. 01-2603, 2002 WL 2007187 (3d. Cir. Sept. 3, 2002) 21

United States v. National Treasury Employees Union, 513 U.S. 454 (1995) 20

United States v. Orlando-Figueroa, 229 F.3d 33 (1st Cir. 2000) 22

United States v. Palumbo Brothers, 145 F.3d 850 (7th Cir. 1998) 22

United States v. Playboy Entertainment Group, 529 U.S. 803 (2000) 23

TABLE OF AUTHORITIES – Continued

Page

Vannatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998).....26

Wurster v. State, 715 N.E.2d 341 (Ind. 1999).....11

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Const. amend 1 .....*passim*

28 U.S.C. § 1257..... 1

Ariz. Rev. Stat. Ann. § 41-1234.01 24

Cal. Gov't Code § 85702 24

Conn. Gen. Stat. Ann. § 9-3331 24

D.C. Code Ann. § 31-4324 24

Del. Code Ann. tit. 18, § 2304(6).....24

Florida Stat., tit. IX § 106.082.....24

Ga. Code Ann. § 21-5-30.1.....24

Ga. Code Ann. § 21-5-30(f).....24

Ill. Rev. Stat., ch. 43, par, 132, Art. VI (1973) 25

Ind. Code Ann. § 4-33-10-2.1.....10

Iowa Code § 99F.6(4)(a).....10

Kan. Stat. Ann. § 25-4153a.....24

Ky. Rev Stat. Ann. § 154(a).....10

La. Acts 2001, No. 1222, § 1..... 4

La. Admin. Code tit. 42, pt. IX, § 2941 3

La. Rev. Stat. Ann. § 4:601-686..... 6

La. Rev. Stat. Ann. § 18:1482..... 5

La. Rev. Stat. Ann. § 18:1483(14) 5, 16

TABLE OF AUTHORITIES – Continued

Page

La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a) 5
La. Rev. Stat. Ann. § 18:1505.2(L) 3, 4, 5, 16
La. Rev. Stat. Ann. § 18:1505.6(C) 5
La. Rev. Stat. Ann. § 18:1505.2(J)(1) 5
La. Rev. Stat. Ann. § 27:28 6
La. Rev. Stat. Ann. § 27:52 7
La. Rev. Stat. Ann. § 27:59 7
La. Rev. Stat. Ann. § 27:71 6
La. Rev. Stat. Ann. § 27:73 6
La. Rev. Stat. Ann. § 27:74 6
La. Rev. Stat. Ann. § 27:75 6
La. Rev. Stat. Ann. § 27:205(19) 4
Mass. Gen. Laws. Ann. ch. 55, § 8 24
Mich. Stat. § 7(b) 10
Minn. Stat. § 10A.273 24
Minn. Stat. § 72A.12 24
Mont. Code Ann. § 33-18-305 24
N.J. Stat. § 5:12-138 10
N.M. Stat. Ann. § 2-11-8.1 (1978) 24
Neb. Rev. Stat. § 49-1469.01 10
Or. Rev. Stat. § 260.174 (2001) 24
S.C. Code Ann. § 2-17-80 (1976) 24
U.S. Const. amend. I 2
Utah Code Ann. § 36-11-305 (1953) 24

TABLE OF AUTHORITIES – Continued

Page

Va. Code Ann. § 59.1-375 10

Va. Code Ann. § 59.1-376 10

Vt. Stat. Ann. tit. 2, § 266 24

Wash. Rev. Code § 48-30.110 24

Wis. Stat. Ann. § 13.625 24

Wyo. Stat. Ann § 26-13-120 24

ADDITIONAL AUTHORITIES

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Edwards Conviction Is Upheld, New Orleans Times-Picayune, August 24, 2002, *available at* 2002 WL 25251462 21

Ex-Treasury Offical Gets 7 Years for Fraud, Wash. Post, Sept. 10, 2002, at B2 22

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Ronald A. Reno, *Gambling and Political Corruption,* Citizen Link, *at* http://www.family.org/cforum/research/papers/a0000934.html (1997) 11

PETITION FOR WRIT OF CERTIORARI

The Casino Association of Louisiana, Inc. ("the Association"), on behalf of itself and its individual members, respectfully petitions for a writ of certiorari to review the judgment of the Louisiana Supreme Court in this case.[1]

OPINIONS BELOW

The opinion of the Louisiana Supreme Court (App., *infra*, 1) is reported at 820 So. 2d 494 (La. 2002). The opinion of the district court (App., *infra*, 42) is unreported.[2]

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on June 21, 2002. App., *infra*, 1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

[1] The members of the Association are: Catfish Queen Partnership in Commendam; Grand Palais Riverboat, Inc.; Horseshoe Entertainment, LLP; Louisiana Riverboat Gaming Partnership; St. Charles Gaming Company, Inc.; Treasure Chest Casino, LLC; Louisiana Casino Cruises, Inc.; PNK (Bossier City), Inc.; and PNK (Harvey), Inc.

[2] There was no intermediate-court review. Under Louisiana law, the State appealed the district court judgment directly to the Louisiana Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech. . . . " This provision applies to the States through the Fourteenth Amendment. The pertinent provisions of the Louisiana Campaign Statute are:

> L. (2) – *No person* to whom this Subsection is applicable . . . *shall make a contribution, loan, or transfer of funds*, . . . , to *[i] any candidate, [ii] any political committee of any such candidate, or to [iii] any other political committee which supports or opposes any candidate.*
>
> (3) The Subsection shall be applicable to all of the following:
>
> * * *
>
> (a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines . . . and any person who owns a riverboat upon which gaming activities are licensed to be conducted.
>
> (iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming

devices or gaming equipment including slot machines . . . , and any person who owns a casino where such gaming operations are licensed.

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity. . . . "Interest," as used in this Subparagraph, means ownership by an individual or his spouse, . . . which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof.

(c) *Any officer, director, trustee, partner, or senior management level employee or key employee* as defined in R.S. 27:205(19) of any person included in Subparagraphs (a) or (b) of this Paragraph.

* * *

(e) *The spouse* of any person to whom this Subsection is made applicable by this Paragraph.[3]

The full text of the statute is reprinted in an appendix to this petition. App., *infra,* 54.

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[3] La. Rev. Stat. Ann. §§ 18:1505.2(L)(2)(3)(a-e) (emphasis added). Also at issue are the administrative regulations implementing the statute. See La. Admin. Code tit. 42, pt. IX, § 2941. App., *infra,* 73.

STATEMENT

This case concerns the constitutionality of a Louisiana statute that prohibits political contributions by a small group of entities and individuals because they are associated with the casino industry.

1. The 1996 Enactment of the Louisiana "Campaign Statute"

In 1996, the Louisiana Legislature enacted the "Campaign Statute," which forbids political contributions by legal "persons" who conduct, own, or manage Louisiana casinos, and their spouses. La. Rev. Stat. Ann. § 18:1505.2(L). The statutory ban applies to many individuals, including officers, directors, and partners of casinos, "senior management level employee[s]" and "key employee[s]" as then defined in the state gaming regulatory statute,[4] and their spouses. A witness estimated that the ban applies to less than 300 individuals associated with Louisiana's fifteen riverboat casinos and one land-based casino. Weill Aff. at 3. Those entities and individuals may not make any contribution to candidates for state and local office, or to political party committees.

The statute also forbids covered persons from making contributions to any "political committee which supports or opposes any candidate," including groups that support or

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[4] Under La. Rev. Stat. Ann. § 27:205(19), a "key employee" was defined as "an employee or agent of the gaming operator, a licensee, or permittee whether or not a gaming employee who, in the opinion of the corporation, holds or exercises critical or significant management or operating authority. . . . " This provision was repealed by La. Acts 2001, No. 1222, § 1, effective July 2, 2001, and has not been replaced.

oppose ballot propositions and constitutional amendments.[5] Recent examples of such ballot issues include a vote last February on whether New Orleans public contractors should be required to pay a "living wage" above the federal minimum wage, *see Choosing Sides In Living Wage Issue Not Easy,* New Orleans Times-Picayune, Jan. 2, 2002, *available at* 2002 WL 3076396, and a constitutional amendment on this November's ballot to reform the State's tax structure. *See New Stelly Stats For Tax Plan, id.,* July 21, 2002, *available at* 2002 WL 3109664. Violations of the Campaign Statute trigger civil penalties of up to $10,000. La. Rev. Stat. Ann. § 18:1505.2(J)(1). Criminal penalties for violations are confined to candidates and officials of political committees. *Id.* § 18:1505.6(C).

Under legislation adopted in 1981, all other Louisiana citizens – including corporations – may make contributions to candidates and political committees within certain dollar limits, which range from $1,000 to $5,000, depending upon the office. La. Rev. Stat. Ann. § 18:1505.2(H)(1)(a). Records of political contributions are publicly available, and are routinely reported by local media outlets. La. Rev. Stat. Ann. § 18:1482.

The purpose of the Campaign Statute, as recited in its text, is to "prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly persons substantially interested in the gaming industry in this state." La.

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[5] Under La. Rev. Stat. Ann. § 18:1483(14)(a)(1), a "political committee" is defined as two or more persons "organized for the primary purpose of supporting or opposing one or more candidates, propositions, recalls of a public officer, or political parties."

Rev. Stat. Ann. § 18:1505.2(L)(1). Despite referring to "special interests" generally, the statute covers only persons associated with gaming.

The Louisiana Legislature legalized gaming in 1991 and 1992 in four separate statutes: one permitting a land-based casino in New Orleans; one authorizing gambling on cruise ships operating out of that city; a statute allowing gambling on riverboats in designated rivers; and a law permitting video poker machines in various locations. The casino statutes are lengthy and detailed, providing for exacting licensing and regulation. *See* La. Rev. Stat. Ann. §§ 4:601-686 (land-based casino); *id.*, §§ 4:501-562 (riverboats). State regulators review and approve a casino's financial procedures, internal accounting controls, and security operations. The State also examines the casino's job descriptions and procedures for handling cash, checks, chips and other cash equivalents. All gaming equipment is subject to state standards and testing. Five-year casino licenses are granted only after public hearings. La. Rev. Stat. Ann. §§ 27:71, 73-75.

For entities and individuals, the overarching license requirement is "suitability," which requires that each license applicant demonstrate, by clear and convincing evidence, that he "is of good character, honesty and integrity, and that he is a person whose prior activities, reputation, habits, and associations do not pose a threat to the public interest or the gaming industry." No license may be issued to anyone convicted of a crime punishable by more than one year in jail, or of any gambling, fraud, theft, or violent offense. *Id.* § 27:28. The Louisiana Gaming Control Board denies licenses to any persons it finds unsuitable. *See Leslie Bonano, Inc. v. Louisiana*, 01-1912 (La. App. 1st Cir. 06/21/02), 822 So.2d 104 (upholding denial of license

for lack of suitability); *Twin B. Casinos, Inc. v. Louisiana*, 00-1681 (La. App. 1st Cir. 09/28/01), 809 So.2d 995 (same). A casino license is a revocable privilege that may be revoked if a licensee no longer meets the suitability standard. La. Rev. Stat. Ann. §§ 27:52, 27:59.

In the year 2000, the commercial casino industry paid $381 million of taxes to the State of Louisiana and employed over 17,000 people in the State. *See* American Gaming Association, State of the States: The American Gaming Association Survey of Casino Entertainment, *at* http://www.americangaming.org/survey2001/economic_impact/impact.html.

2. The Louisiana Supreme Court Invalidates the Campaign Statute for the Video Poker Industry in 1999, Then Upholds It for the Casino Industry In 2002

Parties associated with the video poker industry brought the first challenge to the Campaign Statute. In *Penn v. State ex rel. Foster*, 751 So. 2d 823 (La. 1999), *cert. denied sub nom. Louisiana v. Penn*, 529 U.S. 1109 (2000), the Louisiana Supreme Court applied the ruling in *Buckley v. Valeo*, 424 U.S. 1 (1976), to hold the statute and its enabling regulations facially unconstitutional. *Penn* emphasized that *Buckley*, which upheld limits on the amount of contributions as a "narrow exception" to speech and association rights protected by the First Amendment, still preserved a citizen's right to express political views through campaign contributions. *Penn*, 751 So. 2d at 833 (Calogero, C.J., concurring). Under *Buckley*, the state court held, "it was the symbolic act of contributing to a candidate that constituted political expression, and [] the expression encompassed in the act of contributing was

unrelated to the size of the contribution." *Id.* But *Penn* held that a total ban differs "in kind" from a limit on the contribution amount, which *Buckley* called a "marginal restriction" on speech. *Id.* at 841 (Kimball, J., concurring). "[A] prohibition cuts off all expression associated with making a contribution to a candidate." *Id.* at 834 (Johnson, J., concurring). Accordingly, *Penn* applied strict scrutiny review and declared the Campaign Statute unconstitutional for video-poker licensees.

This case was filed in state court in September 2000, after the *Penn* ruling, and presented a virtually identical attack on the same statute, on behalf of persons associated with the casino industry. The Association and its members requested a declaratory judgment that the Campaign Statute infringes First Amendment rights of speech and association, as well as equal protection of the laws.[6] Three individual casino companies (The Treasure Chest Casino, L.L.C., Harrah's Operating Company, Inc., and Harrah's Entertainment, Inc.) intervened and sought similar relief.

After accepting affidavit evidence in a bench trial, the district court declared the challenged portions of the statute unconstitutional under the First and Fourteenth Amendments, following *Penn*. App., *infra*, 40-41.[7] The trial court noted the absence of evidence from the State showing "that the prohibitions in the Campaign Statute will prevent any corruption in the electoral process," since state

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[6] The petition, without annexed exhibits, is reproduced in the Appendix, *infra*, 74.

[7] The court amended its judgment to state expressly that the regulations implementing the Campaign Statute were also unconstitutional. App., *infra*, 52-53.

law already limited the size of campaign contributions by all citizens. *Id.* at 47. Citing *Penn* and *44 Liquormart v. Rhode Island*, 517 U.S. 484 (1996), the district court also rejected the State's argument that casino licensees should not be accorded First Amendment rights, explaining that "[o]nce a State confers the benefit of legalization upon the gaming industry, it cannot require the industry to surrender its First Amendment rights." *Id.* at 49.[8]

The State appealed directly to the Louisiana Supreme Court. One Justice in the *Penn* majority had retired, and the newly elected Justice now sided with the *Penn* dissenters to reach the opposite outcome.

The opinion below cited two principal grounds for sustaining the Campaign Statute. *First*, the court reasoned that an abridgement of political speech can be "saved" so long as other avenues for political expression remain open. The court highlighted Petitioners' assertedly unfettered right to "make *unlimited independent expenditures* supporting or opposing a candidate." *Casino Association*, App., *infra*, 15 (emphasis in original). Petitioner and its members, the court reasoned, also may "become [] member[s] of a political association and [] personally assist in the association's effort on behalf of candidates; . . . urge their employees to support or oppose particular candidates; . . . openly support individual candidates by displaying yard signs and voluntarily working in political

[8] After holding the statute unconstitutional on First Amendment grounds, the trial court found it unnecessary to rule on the Association's equal protection argument. The Louisiana Supreme Court also did not consider that claim, then entered a final judgment without providing for consideration of that issue on any remand.

campaigns; . . . [and] sponsor phone banks to encourage persons to vote." *Id.* The court noted that several States also bar political contributions from "certain gaming interests,"[9] and that the New Jersey courts rejected a First Amendment challenge to the ban enacted in that State. *Id.* at 17-18 (citing *In re Petition of Soto*, 236 N.J. Super. 303, 565 A.2d 1008 (App. Div. 1989), *certif. denied*, 121 N.J. 608, 583 A.2d 310, *cert. denied*, 496 U.S. 937 (1990)).

Second, the court below ruled that the Campaign Statute was valid even though it imposes a complete ban on contributions. The court found "no indication in *Buckley* that a contribution limit of zero, as opposed to a contribution limit of $1,000, would be unconstitutional." *Id.* at 16. The court thus rejected *Penn*'s distinction between a prohibition and a limit – a distinction that triggered strict scrutiny in *Penn*. *Id.* at 19. The court held that the same test applies to both prohibitions and limits: the one articulated in *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 387-88 (2000) (*"Shrink Missouri"*) (citing *Buckley*, 424 U.S. at 25). *Id.*:

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[9] *See* Ind. Code Ann. § 4-33-10-2.1 (prohibits contributions from any officer or person who holds an interest in a gaming entity); Iowa Code § 99F.6(4)(a) (prohibits contributions from riverboat gambling corporations); Ky. Rev Stat. Ann. § 154(a).160 (prohibits contributions from persons owning lottery contracts); Mich. Stat. § 7(b)(4)-(5) (prohibits contributions from any licensee or person who has an interest in a gaming entity); Neb. Rev. Stat. § 49-1469.01 (prohibits contributions from lottery contractors for duration of contract and three years after); N.J. Stat. § 5:12-138 (prohibits contributions from casino officers or key employees); Va. Code Ann. § 59.1-375, 376 (prohibits contributions from pari-mutuel corporations, executives, and their spouses and families).

> [A] contribution limit involving "significant interference" with associational rights . . . could survive if the government demonstrated that the contribution regulation was "closely drawn" to match a "sufficiently important interest," . . . though the dollar amount of the limit need not be "fine tun[ed]."

The state court then turned to what it called the "heart of the matter": "the history of gambling in Louisiana." *Id.* Quoting from a dissent in *Penn*, the court noted that gambling historically "has been recognized as a vice activity [that] poses a threat to public health and public morals," and stressed the Legislature's interest in "strictly regulat[ing]" that industry. *Id.* at 20, 23.

The state court found the contribution ban was justified by affidavits showing "the public perception that gaming is associated with political corruption" and that nine states have prosecuted government officials in gaming-related cases.[10] The court also cited evidence that the gaming industry makes money (described as a "staggering sum"). App., *infra,* 28. The court concluded that "it is

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[10] This latter assertion was not well supported by the only record evidence on the subject, an article from a website sponsored by a prominent opponent of legalized gaming. Ronald A. Reno, *Gambling and Political Corruption,* Citizen Link, *at* http://www.family.org/cforum/research/papers/a0000934.html (1997). That article pointed to prosecutions in nine states as supposedly involving the gaming industry, but two of the listed prosecutions were the result of FBI "stings," and thus are no reflection of actual corruption. One of the cited instances involved bribery charges that were dismissed by the Indiana Supreme Court, *see generally Wurster v. State*, 715 N.E.2d 341 (Ind. 1999), and two more involved the horse-racing industry, not casinos.

completely plausible, and not at all novel," for the legislature "to distance gaming interests from the ability to contribute to candidates." *Id.*

The court rejected the argument that the contribution ban was not narrowly tailored to any interest in controlling corruption, an argument that stressed (i) Louisiana's pervasive regulation of the casino industry, and (ii) the contribution limits and public disclosure of contributions that apply to all Louisianans. The court recited statements in *Buckley* that the contribution limits in that case, which applied to all citizens, were a proper supplement to bribery laws. *Id.* at 209 (citing *Buckley*, 424 U.S. at 27-28).

The three remaining members of the *Penn* majority dissented, protesting that *Penn* could not be distinguished. They emphasized again the distinction between contribution limits and an absolute ban, noting that "the contested provisions' complete prohibition of contributions is more than merely a 'marginal restriction' on the casino's First Amendment rights as allowed by *Buckley v. Valeo.*" *Id.* at 33 (Calogero, C.J., dissenting). Justice Kimball observed that the State's burden of justifying a contribution ban is "even more onerous," and had not been met. *Id.* at 37.

REASONS FOR GRANTING THE PETITION

This case presents a core question about the First Amendment protections for the act of making political contributions: Whether a State may abrogate that right for persons associated with a legal industry. More than two dozen state laws impose contribution bans that are defined by occupation or industry affiliation, based on a legislative conclusion that each group presents a

particular risk of corruption or is publicly perceived to do so. The lower courts have divided on the First Amendment's application to those bans. This question, left unanswered by both *Buckley* and *Shrink Missouri*, should be resolved by this Court.

1. Louisiana's Selective Ban on Contributions Cannot Be Reconciled With the First Amendment

A political contribution is a "symbolic act" protected by the First Amendment as a "general expression of support for the candidate and his views." *Buckley*, 424 U.S. at 20-21. *Buckley* stressed that contribution limits "operate in an area of the most fundamental First Amendment activities," which are protected by "'our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Id.* at 14 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). The making of a political contribution also reflects "protected associational freedoms": "Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals." *Id.* at 22. These holdings were reaffirmed in *Shrink Missouri*, which observed that contribution restrictions bear "more heavily on the associational right than on freedom to speak." 528 U.S. at 388.

Both *Buckley* and *Shrink Missouri* approved dollar limits on political contributions, accepting the rationale that such limits can be a proper response to "the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." *Buckley*, 424 U.S. at 28;

see also Shrink Missouri, 528 U.S. at 389. Because campaign finance laws apply to fundamental rights at the heart of the democratic system, the First Amendment requires that the State "demonstrate[] that contribution regulation [is] 'closely drawn' to match a 'sufficiently important interest,' though the dollar amount of the limit need not be 'fine tun[ed].'" *Shrink Missouri*, 528 U.S. at 387-88; *see also FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001). This Court has identified only one state interest – combating corruption and its appearance – that justifies the constitutional cost of campaign finance regulation. *See Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 609 (1996).

The Louisiana Campaign Statute presents two central differences from the contribution limits upheld in *Buckley* and *Shrink Missouri*: (i) It completely eliminates the right to make campaign contributions (ii) for a small group of entities and individuals, based on their association with a disfavored industry. Because of these differences, this statute cannot survive review under *Buckley* and *Shrink Missouri*, or under traditional strict scrutiny analysis.

(a) A Flat Ban On Political Contributions Is Subject To The Most Exacting Review.

Both *Buckley* and *Shrink Missouri* emphasized that the contribution limits before them allowed citizens to make non-trivial campaign contributions, and thus imposed only a "marginal restriction" on expression and associational rights. 424 U.S. at 20; 528 U.S. at 386. That rationale cannot be applied to the Louisiana Campaign Statute. Persons covered by that statute can neither make the "symbolic act" of expressing support for a candidate

through a contribution, nor use a contribution to associate with like-minded supporters.

The court below sought to fit within the reasoning of *Buckley* and *Shrink Missouri* by characterizing the contribution ban as a "limit of zero." App., *infra,* 16. Such semantics cannot paper over the fundamental difference between contribution limits and an outright ban. This Court has never approved the elimination of specific First Amendment rights because the speaker may have remaining methods of expression or association. "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939), *quoted in Spence v. Washington*, 418 U.S. 405, 411 n. 4 (1974); *see also Hill v. Colorado*, 530 U.S. 703, 782 (2000); *Shrink Missouri*, 528 U.S. at 418, n. 6. As found by the plurality in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 257 (1986), a statute need not remove all opportunities for speech to violate First Amendment rights. If the remaining opportunities are subject to more burdens, then only a compelling interest can justify government interference with First Amendment activity. *Id.* at 257. Consequently, the Legislature may not justify a broad canceling of certain First Amendment rights on the ground, accepted by the court below, that other rights were not impaired, such as displaying yard signs, participating in phone banks, or making independent expenditures.[11]

[11] The court below misread the Campaign Statute in concluding that casino-related persons have an unfettered right to make independent expenditures. Covered persons may make such expenditures by, for example, purchasing advertising on their own. But the statute bars

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The court below diminished the First Amendment interests at stake by ignoring the increased impact of political messages communicated by organized groups. "Effective advocacy . . . is undeniably enhanced by group association." *Buckley*, 424 U.S. at 15 (internal quotations and citation omitted). An individual's voice will be heard more clearly when it is combined with those of others. Equally, by supporting a candidate who can command the attention of the media and the public, a citizen can gain a wider audience for their shared views. Citizens have a right "to band together in promoting among the electorate candidates who espouse their political views." *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973), *quoted in Cousins v. Wigoda*, 419 U.S. 477, 487 (1975). As the Court explained in striking down a limitation on individuals banding together to make independent expenditures, "allowing the presentation of views while forbidding the expenditure of more than $1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system." *FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 493 (1985).

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covered persons from contributing to a "political committee which supports or opposes any candidate." La. Rev. Stat. Ann. § 18:1505.2(L)(2). "Political committee" is defined in state law as two or more persons "organized for the primary purpose of supporting or opposing one or more candidate, propositions, recalls of a public officer, or political parties." *Id.* § 18:1483(14)(a)(ii). This definition reaches well beyond candidate campaign committees to party committees and many civic action groups.

This Court applies particularly stringent scrutiny to statutes that eliminate rather than regulate a First Amendment right. Thus, strict scrutiny applies to prior restraints of speakers, *e.g., Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976), while more tolerant review applies to regulation of the "time, place, or manner" of the speech. *Hill v. Colorado*, 530 U.S. at 719. Because the Louisiana Campaign Statute eliminates certain First Amendment rights of Petitioners, it should be subjected to the most exacting judicial review. This conclusion is powerfully reinforced because the practical effect of the Campaign Statute is to silence casino-associated speakers, which must impoverish the marketplace of ideas. For example, petitioners and their senior employees and their spouses could not participate in a "political committee" that supports or opposes any candidate to support or oppose a ballot proposition of importance to the industry, but race tracks, Indian tribes, restaurant owners, and anti-gaming activists would be unencumbered. *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) ("government regulation may not favor one speaker over another"); *R. A. V. v. St. Paul*, 505 U.S. 377, 391-92 (1992) (government may not "license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules"). This is precisely why the First Amendment so strongly disfavors outright prohibitions on protected speech.[12]

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[12] This Court has resolved that the power to regulate the gaming industry does not carry with it the power to suppress political speech by industry participants. As explained in *44 Liquormart*, "the First Amendment directs that government may not suppress speech as easily as it may suppress conduct, and that speech restrictions cannot be

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Moreover, speech restrictions that look to the "perspective of the speaker" to define the speech restricted, and thereby inhibit one side of public debate, are presumptively unconstitutional, viewpoint-based restrictions. *Rosenberger*, 515 U.S. at 829; *see also R. A. V.*, 505 U.S. at 391-92. Although the speech restriction here is defined by the speaker's employment, that definition serves as a proxy for viewpoint and results in the same offense to the First Amendment: abridging speech on one side of the public debate. Whether or not this status-based speech restriction is properly termed viewpoint-based, the Campaign Statute favors speech from other perspectives over speech from a casino industry prospective, and should therefore be subjected to the strictest scrutiny.

(b) The Statute Is Not Closely Drawn To Justify a Ban Singling Out One Industry.

Unlike the broadly applied contribution limits at issue in *Buckley* and *Shrink Missouri*, the Louisiana Campaign Statute eliminates association and speech rights for a few persons based on their association with a single industry. *Shrink Missouri* teaches that such restrictions on core First Amendment values are subject to "exacting scrutiny" to assure that they are "closely drawn" to carry out the state's regulatory interests, as demonstrated with "empirical evidence." 528 U.S. at 386, 387, 391. The State presented no significant evidence justifying its decision to single out the casino industry for a blanket restriction on

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treated as simply another means that the government may use to achieve its ends." 517 U.S. at 512.

First Amendment rights, and the statute is so facially overbroad that it could never be termed "closely drawn."

As *Shrink Missouri* explains, whether the State has a "sufficiently important interest" to restrict political contributions will depend on the "novelty and plausibility" of the justification. 528 U.S. at 391. The Missouri statute at issue in that case set contribution limits for all citizens and was based on a commonsense anti-corruption rationale already accepted in *Buckley*. Accordingly, the quantum of "empirical evidence" required to support that restriction was relatively low. *Id.* at 393. This case is quite different. Louisiana has other campaign finance and anti-corruption statutes of general application. The Campaign Statute strips specific First Amendment rights from a small group of persons associated with the casino industry. Such an extreme step is both novel and implausible, and should be supported by specific and powerful empirical evidence of corruption and the appearance of corruption.

This Court confronted a similar situation when it decided the commercial speech claim in *Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173 (1999). Broadcasters sued to enjoin enforcement of a federal statute that prohibited "some, but by no means all, broadcast advertising of lotteries and casino gambling." 527 U.S. at 176. The government defended the statute as minimizing social costs associated with gaming and as assisting the anti-gaming policies of neighboring States. *Id.* at 185-86. The Court found those public interests could be sufficient to justify speech regulation, but concluded that the statute's differential treatment of similar actors fatally undermined the justifications (*id.* at 189-92):

> [A]ny measure of the effectiveness of the Government's attempt to minimize the social costs of gambling cannot ignore Congress' simultaneous encouragement of tribal casino gambling. . . . And, as the Court of Appeals recognized, the Government fails to "connect casino gambling and compulsive gambling with broadcast advertising for casinos" – let alone with broadcast advertising for non-Indian commercial casinos. . . .
>
> [T]he Government presents no convincing reason for pegging its speech ban to the identity of the owners or operators of the advertised casinos. . . . Yet the Government admits that tribal casinos offer precisely the same types of gambling as private casinos.[13]

The statute here fails for the same reason. The court below found the contribution "limit of zero" to be justified by "the history of gambling in Louisiana," relying on a recitation of events back to the eighteenth century. App., *infra,* 19-23. Although the casino industry has an undeniably colorful history, that history provides no valid basis for limiting the First Amendment rights of businesses and employees who operate in today's highly regulated casino environment. If it did, then the First Amendment rights of participants in many other industries also could be eliminated. For example, the oil industry corrupted the Secretary of the

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[13] *See also United States v. Nat'l Treasury Employees Union,* 513 U.S. 454 (1995) (honoraria ban applicable to virtually all federal employees unconstitutional because evidentiary basis – preventing corruption and its appearance – supported such a ban only for legislators and other high level employees).

Interior in the 1920s,[14] and some have argued that the current Administration is unduly solicitous of that industry's concerns. Highway constructors participated in bribery schemes involving a Vice President of the United States[15] and a governor of Louisiana.[16] There have been numerous public corruption prosecutions involving government contractors,[17] insurance entities,[18] construction firms,[19] the

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[14] *See generally Mammoth Oil Co. v. United States*, 275 U.S. 13 (1927) (the "Teapot Dome" scandal).

[15] *See Agnew v. State*, 446 A.2d 425 (Md. 1982).

[16] *See generally, e.g., Edwards Conviction Is Upheld*, New Orleans Times-Picayune, August 24, 2002, *available at* 2002 WL 25251462 ("Edwards is the second governor in Louisiana history to be sentenced to prison. Gov. Dick Leche was convicted in 1940 of taking kickbacks from state highway construction contracts and served about five years in prison.")

[17] *See, e.g., United States v. Kinter*, 235 F.3d 192 (4th Cir. 2000), (bribery and kickbacks by contractors), *cert. denied*, 532 U.S. 937 (2001); *May v. United States*, 175 F.2d 994 (D.C. Cir. 1949) (congressman); *United States v. Biaggi*, 853 F.2d 89 (2d Cir. 1988) (congressman); *United States v. Carroll*, 860 F.2d 500 (1st Cir. 1988) (head of local water department); *United States v. Glantz*, 884 F.2d 1483 (1st Cir. 1989) (sanitation contractors); *United States v. Dischner*, 974 F.2d 1502 (9th Cir. 1992) (mayor and department of public works).

[18] *See, e.g., United States v. Brown*, No. 01-30173, 2002 WL 1967502 (5th Cir. Aug. 23, 2002) (2001) (insurance commissioner involved in sham settlement); *United States v. Evans*, 30 F.3d 1015 (8th Cir. 1994) (state insurance examiner bribed); *United States v. Jackson*, 209 F.3d 1103 (9th Cir. 2000) (state senator bribed); *United States v. Coon*, 187 F.3d 888 (8th Cir. 1999) (state insurance regulator bribed); *United States v. Hyde*, 448 F.2d 815 (5th Cir. 1971) (Alabama Attorney General); *United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982) (state legislator).

[19] *See, e.g., United States v. Milan*, No. 01-2603, 2002 WL 2007187 (3d Cir. Sept. 3, 2002) (mayor of Camden accepted kickbacks from construction contractors, recycler, air conditioning company, home improvement company); *United States v. Krilich*, 257 F.3d 689 (7th Cir.

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liquor industry,[20] banks,[21] and software designers.[22] Corrupt acts by past participants in all those industries cannot justify revoking the First Amendment rights of other participants in those industries.

Moreover, the State never showed that disclosed, regulated, and limited campaign contributions by casino-related persons are connected to corruption. Although large contributions – with their implicit *quid pro quo* – might risk the sort of corruption that justified the contribution limits in *Buckley*, the Louisiana Legislature has addressed that risk by prescribing *uniform* contribution limits that apply to all citizens. No casino licensee or spouse can make contributions over those limits. Indeed, the corruption rationale runs afoul of the State's own act of licensing Petitioners and their officers, directors and senior management as "suitable." Having found those

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2001) (state officials bribed), *cert. denied*, 122 S. Ct. 1175 (2002); *United States v. Orlando-Figueroa*, 229 F.3d 33 (1st Cir. 2000) (mayor solicited bribe); *United States v. Palumbo Bros.*, 145 F.3d 850 (7th Cir. 1998) (state transportation official bribed); *United States v. Griffin*, 154 F.3d 762 (8th Cir. 1998) (Speaker of Missouri House of Representatives bribed to assist construction lobbyist).

[20] *See, e.g., United States v. Evans*, 192 F.3d 698 (7th Cir. 1999) (alderman extorted money from liquor licensees); *United States v. Blanton*, 719 F.2d 816 (6th Cir. 1983) (Tennessee governor); *United States v. Barber*, 668 F.2d 778 (4th Cir. 1982) (state alcoholic beverage commissioner).

[21] *See, e.g., Illinois ex rel. Ryan v. Brown*, 227 F.3d 1042 (7th Cir. 2000) (state treasurer bribed); *United States v. DeVegter*, 198 F.3d 1324 (11th Cir. 1999) (county executive bribed); *United States v. Caldwell*, 544 F.2d 691 (4th Cir. 1976) (West Virginia state treasurer).

[22] *Ex-Treasury Official Gets 7 Years for Fraud*, Wash. Post, Sept. 10, 2002, at B2 (senior official convicted of scheme to secure kickbacks from software contracts).

persons to possess the honesty and integrity needed to qualify for a casino license, *see* pp. 6-7, *supra,* the State can hardly claim that such suitable individuals present a uniquely high potential for corruption.

The record here lacks the empirical evidence required by *Shrink Missouri* and *Greater New Orleans Broadcasting* to justify this industry-specific denial of First Amendment rights for the purpose of combating corruption. The Campaign Statute's repugnance to the First Amendment is reflected in the plainly less restrictive alternatives available to the Legislature to serve its professed purpose. The State could, for example, have required more speech rather than less by publicizing the industry affiliation of donors. Alternatively, the statute could exempt referendum questions and constitutional amendments, as those generally present a much lower opportunity for corruption. Where core protected speech of a specific group is abridged, the existence of such less restrictive means of achieving the State's asserted interest is dispositive. *See United States v. Playboy Entm't Group,* 529 U.S. 803 (2000) (availability of less restrictive alternative for blocking pornographic cable signals rendered restriction unconstitutional); *Rubin v. Coors Brewing Co.,* 514 U.S. 476, 490-91 (1995) (availability of less restrictive means as alternative basis for striking down ban on alcohol content on labels).

2. The Spread of Selective Contribution Bans, and Inconsistent Rulings on Their Constitutionality, Warrant Review by This Court

Seven States in addition to Louisiana have imposed contribution bans on gaming corporations, owners of gaming businesses, lottery contractors, or pari-mutuel

businesses. *See* n. 9, *supra*. Like the Campaign Statute, several of those laws also apply to individuals who are officers, owners, or senior managers of those entities. This legislative pattern, however, is not confined to the gaming industry.

Registered lobbyists have been targeted for blanket bans on contributions in South Carolina and California,[23] and they may not make contributions during the legislative session in at least nine other States.[24] Six States and the District of Columbia limit contributions from insurers.[25] Florida does not permit contributions to candidates for Commissioner of Agriculture by licensed food outlets and convenience stores.[26] In Georgia, public utilities cannot contribute to any political campaign, and all regulated entities are barred from contributing to any candidate for an office that regulates that entity.[27] Massachusetts prohibits contributions by utilities, insurers, banks, and trusts.[28]

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[23] S.C. Code Ann. § 2-17-80 (1976); Cal. Gov't Code § 85702.

[24] Ariz. Rev. Stat. Ann. § 41-1234.01; Conn. Gen. Stat. Ann. § 9-3331; Kan. Stat. Ann. § 25-4153a; Minn. Stat. § 10A.273; N.M. Stat. Ann. § 2-11-8.1 (1978); Or. Rev. Stat. § 260.174 (2001); Utah Code Ann. § 36-11-305 (1953); Vt. Stat. Ann. tit. 2, § 266; Wis. Stat. Ann. § 13.625.

[25] Two states bar only insurer contributions to candidates for insurance commissioner, Ga. Code Ann. § 21-5-30.1; Wash. Rev. Code § 48-30.110, while four others and the District of Columbia prohibit all insurer contributions. D.C. Code Ann. § 31-4324; Del. Code Ann. tit. 18, § 2304(6); Minn. Stat. § 72A.12; Mont. Code Ann. § 33-18-305; Wyo. Stat. Ann § 26-13-120.

[26] Florida Stat., tit. IX § 106.082.

[27] Ga. Code Ann. §§ 21-5-30(f), 21-5-30.1.

[28] Mass. Gen. Laws. Ann. ch. 55, § 8.

Illinois does not permit liquor licensees or their employees to make political contributions.[29]

The lower courts have reached inconsistent outcomes when applying the First Amendment to such bans. *Petition of Soto*, *supra*, sustained a New Jersey prohibition on casino employee contributions which is as broad as the Louisiana Campaign Statute. Bans on contributions by lobbyists during the legislative session have been upheld in both North Carolina and Vermont. *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), *cert. denied*, 528 U.S. 1153 (2000); *Kimbell v. Hooper*, 164 Vt. 80, 665 A.2d 44 (Vt. 1995). The Alaska Supreme Court approved a prohibition on lobbyist contributions to any legislator representing a district other than the one in which the lobbyist voted. *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), *cert. denied*, 528 U.S. 1153 (2000). In *Institute of Governmental Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183 (E.D. Cal. 2001), a complete ban on lobbyist contributions was upheld even though the California Supreme Court struck down a predecessor ban in *Fair Political Practices Comm'n v. Superior Court*, 599 P.2d 46 (Cal. 1979).

The broad prohibition on any campaign contributions by Illinois liquor licensees, their employees and agents was sustained in *Schiller Park Colonial Inn v. Berz*, 349 N.E.2d 61 (Ill. 1976). And the Georgia Supreme Court rejected a First Amendment challenge to a narrower statute which barred insurance companies (but not their

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[29] Ill. Rev. Stat., ch. 43, par. 132, Art. VI (Liquor Control Act), 12a (1973).

employees) from making contributions to candidates for state insurance commissioner. *Gwinn v. State Ethics Comm'n*, 426 S.E.2d 890 (Ga. 1993).

In contrast, contribution bans enacted by Congress, North Carolina, and Minnesota have been invalidated on First Amendment grounds to the extent they applied to non-profit corporations. *Beaumont v. FEC*, 278 F.3d 261 (4th Cir. 2002) (Federal Election Campaign Act); *North Carolina Right to Life, supra*, 168 F.3d at 705 (North Carolina); *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994) (Minnesota). The Ninth Circuit has held that two bans violated the First Amendment: an Oregon statute that barred contributions by out-of-state persons, *Vannatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998), and a California proposition that prohibited campaign-to-campaign contributions. *Service Employees Int'l Union v. Fair Political Practices Comm'n*, 955 F.2d 1312 (9th Cir. 1992). Finally, the contribution ban in the Louisiana Campaign Statute does not apply to members of the video poker industry following the 1999 ruling in *Penn, supra.*

The statutes challenged in these decisions have varied. Some banned contributions to all state candidates; others reached only contributions to candidates for offices that regulate the industry covered by the prohibition. Some limited individuals while others applied only to legal entities. Those factors, however, can be an unreliable guide to the outcome in each case. *Compare Schiller Park Colonial Inn, supra* (upholding broad ban on contributions by liquor licensees and employees), *with Service Employees Int'l* (striking down ban that applies to no natural persons). More important, the justification for every ban has been uniform: *Buckley*'s holding that concern for the reality and appearance of corruption may justify limits on

the First Amendment right to make political contributions. It would be a proper and timely exercise of this Court's jurisdiction to review the extension of that justification beyond contribution limits to outright bans and beyond statutes of general application to statutes directed at certain entitities and individuals.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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September 19, 2002

820 So.2d 494

Supreme Court of Louisiana.

CASINO ASSOCIATION OF LOUISIANA &
Individual Members

v.

STATE of Louisiana, Through the Honorable
Murphy J. FOSTER, Governor, The
Honorable Richard P. Ieyoub, Attorney General.

No. 2002-CA-0265.

June 21, 2002.

R. Gray Sexton, L. Rand Dennis, Richard P. Ieyoub, Attorney General, Maris L. McCrory, Baton Rouge, Counsel for Applicant.

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VICTORY, J.

This case is before us on direct appeal of a finding by the district court that the statutes prohibiting campaign contributions from the riverboat and land-based casino industries are unconstitutional. After reviewing the record and the applicable law, we reverse the judgment of the district court and uphold the constitutionality of these statutes.

FACTS AND PROCEDURAL HISTORY

On September 20, 2000, the Casino Association of Louisiana ("CAL")[1] and its individual members filed a Petition for Declaratory Judgment in the 19th Judicial District Court alleging that the provisions of La. R.S. 18:1505.2(L) prohibiting campaign contributions by the riverboat and land-based casino industries are unconstitutional. Treasure Chest Casino, LLC ("TCC")[2] and two Harrah's entities, Harrah's Operating Company, Inc. and Harrah's Entertainment, Inc. (jointly "Harrah's")[3], were permitted to intervene in the lawsuit in light of their respective interests in the laws that regulate the casino gaming industry.

Harrah's, TCC, CAL and its individual members are prohibited from making campaign contributions to candidates or to political committees of candidates by operation of La. R.S. 18:1505.2(L), which provides in pertinent part as follows:

> L. (1) The legislature recognizes that it is essential to the operation of effective democratic

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[1] CAL is a corporation which represents the interests of the owners and operators of riverboat casinos within this state.

[2] TCC is a member of CAL and is licensed by the State to conduct riverboat gaming operations upon its licensed riverboat located in Kenner, Louisiana.

[3] Harrah's, through certain subsidiaries, is authorized to conduct riverboat gaming operations upon three licensed riverboats, one of which is located in Shreveport, Louisiana, and two of which are located in Lake Charles, Louisiana, and also owns a 49% interest in JCC Holding Co., the sole member of the land-based casino gaming operator, Jazz Casino Company LLC ("JCC").

government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:

. . .

(a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act [La. R.S. 27:41 *et seq.*], and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

(iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as

a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act [La. R.S. 27:201 *et seq.*], and any person who owns a casino where such gaming operations are licensed.

. . .

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest," as defined in this Subparagraph, means ownership by an individual or spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more or each legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof.

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

. . .

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

Following a hearing, the district court, Judge Timothy Kelley presiding, declared La. R.S. 18:1505.2(L)(3)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii) and (iii), unconstitutional. The court also declared unconstitutional a corresponding provision of the Louisiana Administrative Code, 42 LA-ADC Pt. IX, § 2941, insofar as it applies to the owners of any holding company of the casino gaming operator, their affiliated companies, and all of their officers, directors, partners, senior management, and key employees. In support, the district court relied upon the reasoning of the majority of this Court in *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823, *cert. denied,* 529 U.S. 1109, 120 S.Ct. 1962, 146 L.Ed.2d 793 (2000), which declared unconstitutional provisions of La. R.S. 18:1505.2(L) barring campaign contributions by the video poker industry. The State has appealed the district court's judgment directly to this Court pursuant to La. Const. Art. V, § 5(D).

DISCUSSION

In *Penn,* in a four-three per curiam decision, this Court declared unconstitutional La. R.S. 18:1505.2(L)(3)(a)(i), La. R.S. 18:1505.2(L)(3)(b)(i) insofar as it is applied to La. R.S. 18:1505.2(L)(3)(a)(i), and Rule 107 of Title 42 of the Louisiana Administrative Code, insofar as Rule 107 precludes candidate and political committee contributions by video draw poker licensees.[4] For the reasons that follow,

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[4] In *Penn,* Chief Justice Calogero, Justices Kimball and Johnson, and former Justice Harry Lemmon, issued concurring opinions and the

(Continued on following page)

we decline to follow *Penn* and hold that the legislative bans on campaign contributions by riverboat gaming and land-based casino interests do not violate the First and Fourteenth Amendments to the United States Constitution.[5]

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. Amend. I. The Fourteenth Amendment makes this most important guarantee applicable to the states as well as the Congress. *Buckley v. Valeo* is the seminal United States Supreme Court case on modern campaign finance reform in the context of the First Amendment. 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). In reviewing the contribution[6] and expenditure[7] limits contained in the 1974 amendments to the Federal Election Campaign Act of

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author of this opinion and Justices Traylor and Knoll issued dissenting opinions.

[5] The per curiam opinion in *Penn* noted that while other sections of La. R.S. 18:1505.2(L) also prohibit certain persons from contributing to candidates and political committees of candidates, those sections were not under attack in *Penn* and therefore *Penn* did not consider the validity of those provisions. 751 So.2d at 824, n. 2.

[6] The Act defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office;" or "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. 431(8).

[7] The Act defines an "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(9)(A)(i). An "expenditure" is also a "written contract, promise, or agreement to make an expenditure."

1971 (the "Act"),[8] the *Buckley* Court made clear that restrictions on campaign contributions and expenditures "operate in an area of the most fundamental First Amendment activities," namely, the rights of freedom of association and freedom of expression. 424 U.S. at 14, 96 S.Ct. 612. In discussing the Act's impact on the First Amendment's guarantee of freedom of expression, the Court distinguished between expenditure restrictions and contribution restrictions, characterizing expenditure restrictions as follows:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. . . .
>
> The *expenditure limitations* contained in the Act represent *substantial rather than merely*

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[8] The statutes at issue, Federal Election Campaign Act of 1971, 86 Stat. 3, as amended by the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, contained the following provisions: individual political contributions are limited to $1,000 to any single candidate per election, with an overall annual limitation of $25,000 by any contributor; independent expenditures by individuals and groups "relative to a clearly identified candidate" are limited to $1,000 a year; campaign spending by candidates for various federal offices and spending for national conventions by political parties are subject to prescribed limits; contributions and expenditures above certain threshold levels must be reported and publicly disclosed.

> *theoretical restraints* on the quantity and diversity of political speech. . . . (Emphasis added).

424 U.S. at 19, 96 S.Ct. 612.[9]

In discussing restraints on contributions in the context of freedom of expression rights, the Court held:

> By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails *only a marginal restriction upon the contributor's ability to engage in free communication.* A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the

[9] Accordingly, the Court held that the constitutionality of the Act's expenditure ceilings turned "on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations on core First Amendment rights of political expression" and held that the expenditure ceilings were unconstitutional because they "place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." *Id.*, 424 U.S. at 46, 58-59, 96 S.Ct. 612.

> symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor. (Emphasis added).

Id., 424 U.S. at 21, 96 S.Ct. 612.[10] The Court made the distinction again later in the opinion when noting that "unlike a person's contribution to a candidate, a candidate's expenditure of his personal funds directly facilitates his own political speech." *Id.*, 424 U.S. at 53, n. 58, 96 S.Ct. 612; *see also California Medical Ass'n v. Federal Election Comm'n,* 453 U.S. 182, 196, 101 S.Ct. 2712, 69 L.Ed.2d 567 (1981) (Plurality Opinion) (limits on the amounts a group may contribute to a multi-candidate political committee is "speech by proxy" and "is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection"); *cf. Federal Election Comm'n v. National Conservative Political Action Comm.,* 470 U.S. 480, 105 S.Ct. 1459, 84 L.Ed.2d 455

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[10] In *Brown v. State ex rel. Department of Pub. Safety and Corrections,* this Court held that the provisions of La. R.S. 27:13(C)(6), which prohibited members or employees of the Louisiana Gaming Control Board from making contributions to committees supporting or opposing issues, i.e., independent expenditures not linked to a candidate, were unconstitutional. 96-2204 (La.10/15/96), 680 So.2d 1179 (Victory, J., not on panel). While a prohibition in La. R.S. 27:13(C)(6) regarding campaign contributions to a candidate was not at issue in *Brown,* this Court made clear that "there is a fundamental constitutional difference between money spent to advertise views and money contributed to a candidate." *Id.* at 1182.

(1985) (holding expenditure limitations on political committees unconstitutional and noting that "there is a fundamental constitutional difference between money spent to advertise views and money contributed to a candidate"); *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 116 S.Ct. 2309, 135 L.Ed.2d 795 (1996) (*Colorado I*) (holding that spending limits were unconstitutional as applied to political groups independent expenditures in connection with a senatorial candidate, making explicit the distinction between expenditures coordinated with a candidate and independent expenditures); *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 121 S.Ct. 2351, 150 L.Ed.2d 461 (2001) (*Colorado II*) (holding that a political party's coordinated expenditures, unlike expenditures truly independent, may be restricted to minimize circumvention of contribution limits).

The Court in *Buckley* also held that the Act's contribution and expenditure limits "impinge on protected associational freedoms," as follows:

> Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates. And the Act's contribution limitations permits associations and candidates to aggregate large sums of money to promote effective advocacy.

Id., 424 U.S. at 22-23, 96 S.Ct. 612.

Thus, in addressing the contribution limitations, the Court held that the "*primary* problem raised by the Act's contribution limitations is their restriction of *one aspect* of the contributor's freedom of political association." *Id.*, 424 U.S. at 24, 96 S.Ct. 612 (emphasis added).

In discussing the appropriate standard of review to be used to determine whether the contribution limitations violated the contributor's freedom of political association rights, the *Buckley* Court held:

> In view of the fundamental nature of the right to associate, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *NAACP v. Alabama,* [357 U.S. 449, 460-461, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)]. Yet, it is clear that "[n]either the right to associate nor the right to participate in political activities is absolute." *CSC v. Letter Carriers,* 413 U.S. 548, 567 [93 S.Ct. 2880, 37 L.Ed.2d 796] (1973). Even a "significant interference with protected rights of political association" may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. *Cousins v. Wigoda,* [419 U.S. 477, 488, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975)]; *NAACP v. Button,* [371 U.S. 415, 438, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)]; *Shelton v. Tucker,* 364 U.S. 479, 488 [81 S.Ct. 247, 5 L.Ed.2d 231] (1960).

Id., 424 U.S. at 25, 96 S.Ct. 612.[11] The Supreme Court has recently identified further reasons for the differing standards of review that the Court applies to restrictions on political expenditures and political contributions as follows:

> Spending for political ends and contributing to political candidates both fall within the First Amendment's protection of speech and political association. *Buckley,* 424 U.S. at 14-23, 96 S.Ct. 612. But ever since we first reviewed the 1971 Act, we have understood that limits on political expenditures deserve closer scrutiny than restrictions on political contributions. *Ibid; see also, e.g., Shrink Missouri,* 528 U.S. at 386, 120 S.Ct. 897; *Colorado I, supra,* at 610, 614-615, 116 S.Ct. 2309; *Massachusetts Citizens for Life,* 479 U.S. at 259-260, 107 S.Ct. 616. Restrictions on expenditures generally curb more expressive and associational activity than limits on contributions do. *Shrink Missouri, supra,* at 386-388, 120 S.Ct. 897; *Colorado I, supra,* at 615, 116 S.Ct. 2309;

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[11] The Court in *Shrink Missouri, infra,* explained the standard of review as it applied to the correlative speech and association rights as follows:

> While [in *Buckley*] we did not attempt to parse distinctions between the speech and association standards of scrutiny form contribution limits, we did make it clear that those restrictions bore more heavily on the associational right than on freedom to speak. 424 U.S. at 24-25, 96 S.Ct. 612. We consequently proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well, and we held the standard satisfied by the contribution limits under review.

528 U.S. at 388.

> *Buckley,* 424 U.S. at 19-23, 96 S.Ct. 612. A further reason for the distinction is that limits on contributions are more clearly justified by a link to political corruption than limits on other kinds of unlimited political spending are (corruption being understood not only as quid pro quo agreements, but also as undue influence on an officerholder's judgment, and the appearance of such influence, *Shrink Missouri, supra,* at 388-389, 120 S.Ct. 897). At least this is so where the spending is not coordinated with the candidate or his campaign. . . .
>
> Given these differences, we have routinely struck down limitations on independent expenditures by candidates, other individuals, and groups, *see Federal Election Comm'n v. National Conservative Political Action Comm.,* 470 U.S. 480, 490-501, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985) (political action committees); *Buckley, supra,* at 39-58, 96 S.Ct. 612 (individuals, groups, candidates, and campaigns), while repeatedly upholding contribution limits, *see Shrink Missouri, supra* (contributions by political action committees); *California Medical Assn. v. Federal Election Comm'n,* 453 U.S. 182, 193-199, 101 S.Ct. 2712, 69 L.Ed.2d 567 (1981) (contributions by individuals and associations); *Buckley, supra,* at 23-36, 96 S.Ct. 612 (contributions by individuals, groups, and political committees).

Colorado II, supra, 533 U.S. at 440, 121 S.Ct. 2351.

In applying that standard of review and in upholding the constitutionality of the contribution limitations, the *Buckley* Court found that the Act's primary purpose of limiting the actuality and appearance of corruption resulting from large individual financial contributions was a

constitutionally sufficient justification for the limitations. Specifically, the Court held that "[t]o the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined," and that "[o]f almost equal concern as the danger of actual quid pro quo arrangements in the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Id.*, 424 U.S. at 26-27, 96 S.Ct. 612. The Court opined that "Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.'" *Id.* (Citing *CSC v. Letter Carriers, supra,* 413 U.S. at 565, n. 29, 93 S.Ct. 2880).

In *Penn,* wherein a majority of this Court declared unconstitutional provisions of La. R.S. 18:1505.2(L) that barred campaign contributions by the video poker industry, the common thread among the four concurring opinions is the authors' beliefs that *Buckley* identified only a "single narrow exception" to the rule that limits on political activity are contrary to the First Amendment, and that, because the statutes at issue "prohibited" rather that [sic] "limited" the contributions, they did not fit into the "exception" and were therefore unconstitutional. *See, Penn, supra* (Concurring Opinion of Chief Justice Calogero at 833, 834; Concurring Opinion of Justice Johnson at 827, 831; Concurring Opinion of former Justice Lemmon at 839; Concurring Opinion of Justice Kimball at 840). These concurrences base their reasoning on language in *Buckley* that emphasized that the contribution limitation was only a "marginal restriction" because it still permitted "the

symbolic expression of support evidenced by a contribution" even if the contribution would not be a significant one. Thus, they reasoned, because the statutes at issue in *Penn,* like in this case, prohibit contribution, they did not allow a "symbolic expression of support" and were therefore unconstitutional.

What the majority of the court in *Penn* failed to realize is that under La. R.S. 18:1505.2(L), as pointed out by the Attorney General's office and the Counsel for the Supervisory Committee on Campaign Finance Disclosure in their brief to this Court, the parties prohibited from making campaign contributions to a candidate or political committee of a candidate can still make *unlimited independent expenditures* supporting or opposing a candidate. This allows much more room for political expression and association than the statute involved in *Buckley,* where the statute also limited campaign expenditures. In this case, there is no need to resort to finding a right to "the symbolic expression of support evidenced by a contribution," however small, to save this statute from the doom of unconstitutionality, as these parties still have the full right to political expression and association by making unlimited political expenditures in favor of the candidate of their choice. In addition, they have the same rights the Court recognized as significant in *Buckley,* i.e., they can still become a member of a political association and personally assist in the association's effort on behalf of candidates; they can still urge their employees to support or oppose particular candidates; they may still openly support individual candidates by displaying yard signs and voluntarily working in political campaigns; and they may sponsor phone banks to encourage persons to vote.

Furthermore, there is no indication in *Buckley* that a contribution limit of zero, as opposed to a contribution limit of $1,000.00, would be unconstitutional. In fact, since *Penn,* the United States Supreme Court has clarified and explained the holding in *Buckley,* and has specifically addressed the issue of what limit would possibly be too low to withstand constitutional scrutiny. In *Nixon v. Shrink Mo. Gov't PAC,* the Court held that *Buckley* was authority for state limits on contributions to state political candidates but that the state limits did not need to be "pegged to *Buckley's* dollars." 528 U.S. 377, 381, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000).[12] The *Shrink Missouri* court clearly stated that "[i]n *Buckley,* we specifically rejected the contention that $1,000 *or any other amount,* was a constitutional minimum below which the legislatures could not regulate." *Id.,* 528 U.S. at 397, 120 S.Ct. 897 (emphasis added). The Court set out the proper standard for determining when a minimum might be too low to withstand constitutional scrutiny as follows:

> As indicated above, [in *Buckley*] we referred instead to the outer limits of contribution regulation by asking whether there was any showing that the limits were so low as to impede the ability of candidates to "amass the resources necessary for effective advocacy." 424 U.S. at 21, 96 S.Ct. 612. We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of

[12] *Shrink Missouri* involved a Missouri statute which imposed contribution limits ranging from $250 to $1,000, subject to adjustment each even-numbered year based [sic] the cumulative consumer price index.

> notice, and render the contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to mount a campaign with all the dollars likely to be forthcoming.

Id. Unlike the across-the-board restrictions involved in *Buckley* and *Shrink Missouri,* the restrictions in this case involve just one licensed land-based casino and 15 licensed riverboat gaming facilities throughout Louisiana. Thus, clearly, in this case, the ban will have a very minimal effect on the candidates' ability "to amass the resources necessary for effective advocacy." *Id.*

We must also point out that seven other states have enacted statutes that *prohibit* campaign contributions by certain gaming interests.[13] Further, three other states' appellate courts that have considered whether a complete prohibition on campaign contributions, rather than a monetary limitation, is constitutional in light of *Buckley* have answered in the affirmative. *State v. Alaska Civil Liberties Union,* 978 P.2d 597 (Alaska 1999), *cert. denied,*

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[13] Indiana, Ind. Stats. 4-33-10-2.1 (prohibits contributions from any officer or person who holds an interest in a gaming entity); Iowa, Iowa Stats. 99F.6(4)(a) (prohibits contributions from riverboat gambling corporations); Kentucky, Rev. Stats. 154(a).160 (prohibits contributions from persons owning lottery contracts); Michigan, Mich. Stats. 7(b)(4)-(5) (prohibits contributions from any licensee or person who has an interest in a gaming entity); Nebraska, Neb. Stats. 49-1469.01 (prohibits contributions from lottery contractors for duration of contract and three years after); New Jersey § 5:12-138 (prohibits contributions from casino officers or key employees); Virginia, § 59.1-375, 376 (prohibits contributions from pari-mutual corporations, executives and their spouses and families).

528 U.S. 1153, 120 S.Ct. 1156, 145 L.Ed.2d 1069 (2000) (upholding complete ban on campaign contributions by out-of-district lobbyists); *In re Petition of Soto,* 236 N.J.Super. 303, 565 A.2d 1088 (1989), *certif. denied,* 121 N.J. 608, 583 A.2d 310 (1990), *cert. denied,* 496 U.S. 937, 110 S.Ct. 3216, 110 L.Ed.2d 664 (1990) (upholding New Jersey's complete ban on campaign contributions by gaming interests; Louisiana's statute is based on this, *see* pp. 506-507, *infra*);[14] *Schiller Park Colonial Inn, Inc. v. Berz,* 63 Ill.2d 499, 349 N.E.2d 61 (1976) (upholding complete ban on campaign contributions by liquor licensees or their representatives).[15] In addition, two federal courts have upheld complete bans on campaign contributions by lobbyists, both holding that the fact that the contribution restrictions were bans, rather that [sic] monetary limits, did not render them unconstitutional

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[14] In *Petition of Soto,* a casino employee challenged the constitutionality of a New Jersey statute that prohibited any casino key employee from contributing any money or thing of value to any political candidate or committee of any political party. In holding the statute constitutional, the court found a compelling state interest in preventing the appearance of impropriety given the "acknowledged vulnerability of the casino industry to organized crime and the compelling interest in maintaining the public trust, not only in the casino industry but also the governmental process which so closely regulates it." 565 A.2d at 1098. In addition, the court found that the statute had been narrowly drawn and precisely tailored, commenting that gambling "is an activity rife with evil" and that it was the pronounced policy of the State "to regulate and control the casino industry with the utmost strictness." *Id.*

[15] Other courts have also upheld campaign contribution restrictions of certain regulated industries and professions. See *Blount v. SEC,* 61 F.3d 938, 941-48 (D.C.Cir.1995) (upholding regulation restricting ability of municipal securities professionals to contribute to or solicit contributions for political campaigns of elected officials from whom they may obtain business);

under *Buckley. North Carolina Right to Life, Inc. v. Bartlett,* 168 F.3d 705 (4th Cir.1999), *cert. denied,* 528 U.S. 1153, 120 S.Ct. 1156, 145 L.Ed.2d 1069 (2000); *Inst. of Governmental Advocates v. Fair Political Practices Comm'n,* 164 F.Supp.2d 1183 (E.D.Cal.2001). Finally, corporate contributions to candidates and candidate committees have long been prohibited completely at the federal level. 2 U.S.C. § 441b(a). Twenty-two states also ban corporate contributions. *See, generally,* Chart 2A, Federal Election Commission, E. Feigenbaum & J. Palmer, Campaign Finance Law 98 (1998).

Thus, contrary to the concurring opinions' viewpoints that carried the day in *Penn,* we find the fact that the campaign contribution ban found in La. 18:1505.2(L)(2) is a *prohibition* on contributions, rather than a *limitation,* does not render it per se unconstitutional under *Buckley.* Instead, the restriction is to [sic] analyzed under the burden of proof enunciated in *Buckley,* as clarified in [sic] by later Supreme Court cases, i.e., "that a contribution limit involving 'significant interference' with associational rights, could survive if the Government demonstrated that the contribution regulation was "closely drawn" to match a "sufficiently important interest . . . " *Shrink Missouri,* 528 U.S. at 387-388, 120 S.Ct. 897 (citing *Buckley,* 424 U.S. at 25, 96 S.Ct. 612).

In order to conduct this analysis, we must get to the heart of the matter, the history of gambling in Louisiana. This history was ably explained by Justice Knoll in her dissent in *Penn:*

> The Louisiana Constitution of 1879 declared gambling a "vice" and the Legislature was directed to enact laws for its suppression. LA.

CONST. art. 172 (1879). Louisiana's Constitutions of 1898, 1913, and 1921 all contained similar provisions regarding gambling. See LA. CONST. art. 19, Sec. 8 (1921); LA. CONST. arts. 178, 188, 189 (1913); LA. CONST. arts. 178, 188, 189 (1898). Although the delegates to the Constitutional Convention which convened on January 5, 1973, eliminated the moral condemnation of gambling and chose to suppress gambling rather than prohibit it, it is clear that the Legislature continued its role of defining gambling. *Polk v. Edwards,* 626 So.2d 1128, 1141 (La.1993). Thus, the Louisiana electorate ratified the Constitution of 1974 which followed its predecessor documents with the inclusion of article XII, Sec. 6(B) that "gambling shall be defined by and suppressed by the Legislature." In order to understand the reasons for these constitutional declarations throughout the period of Louisiana's statehood, reference to the history of gambling in this State is essential.

Historically, gambling has been recognized as a vice activity which poses a threat to public health and public morals. Although the vice of gambling existed throughout the State during the eighteenth and nineteenth centuries, New Orleans was recognized as the gambling capital. See Timothy L. O'Brien, *Bad Bet: The Inside Story of the Glamour, Glitz, and Danger of America's Gambling Industry* (1998). The State outlawed gambling in 1812, but New Orleans received a special exemption that allowed gambling to continue.

When federal troops occupied New Orleans from 1862 to 1877, the Louisiana Lottery Company, a private corporation, went into business. O'Brien, *supra,* at 105-106. Even though the Constitution

had previously declared lotteries illegal, a constitutional amendment was passed in 1866 and the Louisiana Lottery Corporation was given a 25-year charter to operate. *Id.* The Lottery was marketed nationwide via the mail and branch offices and by 1890 was taking in $28 million yearly. *Id.* at 106-107. Lottery proceeds not only paid for the first waterworks in New Orleans, but this lucre supported the New Orleans charity hospital and upgraded the public schools. *Id.* at 107; Stephanie A. Martz, *Note, Legalized Gambling and Public Corruption: Removing the Incentive to Act Corruptly, or, Teaching an Old Dog New Tricks,* 13 J.L. & Pol. 453, 458-59 (1997). In 1893, the federal government intervened in the Louisiana Lottery and passed a law prohibiting any form of lottery sales and promotion. Martz, *supra* at 459.

Gambling remained available in New Orleans during the first decades of the twentieth century in small establishments around the city, even though the Constitution had outlawed all gambling. O'Brien, *supra,* at 108. In 1934, Huey P. Long allowed slot machines in New Orleans and several casinos outside the city. *Id.* In the 1950s a reform movement ran the larger casinos away, but the slot machines and back-alley casinos stayed in business until the 1970s. *Id.* at 109.

With the boom of the petrochemical industry during the 1970s and 1980s, the State's economy was revitalized. *Id.* There was no longer a need for gambling proceeds to fund government projects, that is until the bottom fell out of the oil industry. *See Id.* However, when the State's economy went into a tailspin with the decline in the oil industry, the State Legislature, armed with its constitutional authority to "define gambling,"

turned to legalized gambling as a means out of the fiscal doldrums. *See Id.* In a series of enactments in 1991 and 1992, the Legislature passed four acts providing for the licensing of gaming, to-wit: at a land-based casino in New Orleans, La. R.S. 4:601-686; on cruise ships operating out of New Orleans, La. R.S. 14:90(B); on river boats operating on designated rivers in the state, La. R.S. 4:501-562; and by means of video poker machines located throughout the State, La. R.S. 33:4862.1-19.

In *Polk,* although this Court upheld the power of the Legislature to provide for the licensing of gaming, it further recognized that the Legislature's authority to regulate gambling constitutes a legitimate exercise of police power. *Id.* at 1137; see also *Theriot v. Terrebonne Parish Police Jury,* 436 So.2d 515, 516 (La.1983); *State v. Mustachia,* 152 La. 821, 94 So. 408 (1922); *Ruston v. Perkins,* 114 La. 851, 38 So. 583 (1905). "Defining and prescribing means of suppression are left to the state Legislature and the legislative determination in this regard constitutes an appropriate exercise of police power for the protection of the public." *Theriot,* 436 So.2d at 521. Moreover, in *Polk* this Court further held that the power to suppress gambling and "to determine how, when, where, and in what respects gambling shall be prohibited or permitted" has been constitutionally delegated to the Legislature. *Polk,* 626 So.2d at 1128.

In 1996, the Legislature, pursuant to its constitutional mandate to define and suppress gambling, enacted the Louisiana Gaming Control Law, La. R.S. 27:1-:392. From the outset, the legislation announced the public policy of this State

concerning gaming. In La. R.S. 27:2(A), the Legislature stated:

> The legislature hereby finds and declares it to be the public policy of the state that the development of a controlled gaming industry to promote economic development of the state requires thorough and careful exercise of legislative power to protect the general welfare of the state's people by keeping the state free from criminal and corrupt elements. The legislature further finds and declares it to be the public policy of the state that to this all persons, locations, practices, associations, and activities related to the operation of licensed and qualified gaming establishments and the manufacture, supply, or distribution of gaming devices and equipment shall be strictly regulated.
>
> This legislation further declared that any license, casino operating contract, permit, approval, or thing obtained or issued pursuant to the provisions of this Title or any other law relative to the jurisdiction of the board is expressly declared by the legislature to be a pure and absolute revocable privilege and not a right, property or otherwise, under the constitution of the United States or of the state of Louisiana.

La. R.S. 27:2(B); *see also Catanese v. Louisiana Gaming Control Bd.*, 97-1426 (La.App. 1 Cir. 5/15/98), 712 So.2d 666, 670, *writ denied*, 98-1678 (La.10/09/98), 726 So.2d 30; *Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Div.*,

> 97-0121 (La.App. 1 Cir. 2/20/98), 710 So.2d 799, 807, *writ denied,* 98-0780 (La.5/8/98), 719 So.2d 51.
>
> In the same legislative session, the Legislature enacted La. R.S. 18:1505.2(L) relative to campaign finance.

Penn, supra at 849 (Knoll, J., dissenting).

With this background in mind, the legislative intent behind the enactment of this statute can be easily gleaned from the legislative committee meeting notes. *See* Committee on Senate and Governmental Affairs, Verbatim Transcript Meeting of March 26, 1996, Senate Bill 12 by Senator Dardenne. Senator Dardenne introduced the bill with the following information:

> . . . we're attempting to track as well in this legislation what was done in New Jersey [an obvious reference to the *Soto* case] which is the only state we know of that has imposed a statutory ban on gambling contributions.
>
> . . .
>
> . . . I think unfortunately we can make a strong argument in Louisiana that there is a compelling state interest to prevent the gambling industry from making contributions and there has been unfortunate data that would support that based upon some investigations that have been underway and the problems we've seen . . . .
>
> . . .
>
> . . . I think that this industry stands onto itself and ought to stand onto itself as one that we ought to be singling out for the purpose of trying

> to limit their involvement in the legislative process and unfortunately I think it is appropriate to look to what has happened over the course of the past couple of years specifically on how individuals within the industry have been accused of attempting to influence the legislative process based upon the industry's entry into the state. . . . it is directed to [sic] specifically at the gambling industry and to say we believe in Louisiana; we ought to limit the gambling industry's influence in the political process.
>
> . . .
>
> . . . I will say this about this particular bill. I don't know of any other industry that was singled out in the past campaign as something for the public to look at when you had gubernatorial candidates, you had legislative candidates saying I'm not going to take money from the gambling industry or making a campaign issue over where contributions came from. This is a major, major source of concern in the minds of the public from my viewpoint as to what influence the gambling industry has had over this legislature and this government during its infancy in Louisiana and I think it is an appropriate bill to advance in the legislature to say that we are going to say it is not appropriate for the gambling industry to be making political contributions.

Id.

As stated in *Shrink Missouri,* the Court in *Buckley* found "the prevention of corruption and the appearance of corruption" to be a "constitutionally sufficient justification" for campaign contribution restrictions. 528 U.S. at 388, 120 S.Ct. 897 (citing *Buckley,* 424 U.S. at 25-26, 96 S.Ct. 612). The obvious purpose behind the statute at issue

in this case is the prevention of corruption and the appearance of corruption by the gaming industry upon the political process, and under *Buckley* and *Shrink Missouri,* this is a constitutionally sufficient justification for the campaign contribution restrictions.

The gaming interests argue that the statute is unconstitutional because it has an unlawful purpose, as stated in the statute, "to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests." La. R.S. 18:1505.2(L)(2). They argue that preventing "influence" or the "appearance of influence" is not a recognized legitimate governmental interest under *Buckley* and its progeny. However, a clear reading of the statute in light of the history of gambling in this State along with the legislative history of the statute leaves no doubt that the purpose of the statute is to prohibit the corruption and appearance of corruption which the legislature has determined will not be permitted in the highly regulated gaming industry. As the Court explained in *Shrink Missouri:*

> In speaking of "improper influence" and "opportunities for abuse" in addition to "quid pro quo arrangements," we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors. These were the obvious points behind our recognition that the Congress could constitutionally address the power of money "to influence governmental action" in ways less "blatant and specific" than bribery.

Shrink Missouri, supra at 389, 120 S.Ct. 897 (citing *Buckley,* 424 U.S. at 28, 96 S.Ct. 612).[16]

The gaming interests also argue that the government's burden to show that a speech restriction actually advances the asserted governmental interest is not satisfied by mere speculation or conjecture, and that instead, the government must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree. This proposition was also offered by Justice Johnson in support of her concurring opinion in *Penn.* However, *Shrink Missouri* specifically rejected this proposition in the context of campaign contribution restrictions, holding that "as to [what is necessary as a minimum evidentiary showing], respondents are wrong in arguing that in the years since *Buckley* came down we have 'supplemented' its holding with a new requirement that governments enacting contribution limits must 'demonstrate that the recited harms are real, not merely conjectural . . . '" *Id.,* 528 U.S. at 391-92, 120 S.Ct. 897. The Court held that "the quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Id.*

Evidence provided to the trial court in this case included affidavits outlining the public perception that

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[16] *See also Federal Election Comm'n v. National Conservative Political Action Comm.,* 470 U.S. 480, 497, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985) ("Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns").

gaming is associated with political corruption, information that within the last ten years, nine states (including Louisiana) have prosecuted governmental officials in gaming cases, and statistics showing the staggering sum of money collected by those within the gaming industry. This evidence illustrates why the legislature found it was imperative to prohibit campaign contributions from persons engaged in the gaming industry. Given the history of the gaming industry and its connection to public corruption and the appearance of public corruption, it is completely plausible, and not at all novel, for the Louisiana legislature to have concluded that it was necessary to distance gaming interests from the ability to contribute to candidates and political committees which support candidates. *See also Shrink Missouri,* 528 U.S. at 390, 120 S.Ct. 897 ("*Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible").

The United States Supreme Court has also repeatedly rejected the gaming interests' argument that the statute is not "closely drawn" to support a sufficiently important government interest because there are less restrictive measures on the books, such as contribution limits,[17] disclosure laws[18] and anti-bribery statutes, that would solve the problem that this more restrictive statute seeks to address. The *Buckley* Court rejected the argument that the contribution limits must be invalidated because bribery laws and narrowly drawn disclosure requirements

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[17] La. R.S. 18:1505.2(H)(1)(a).

[18] La. R.S. 18:1482 *et seq.*

constitute a less restrictive means of dealing with the problem, finding that bribery laws only criminalize the most blatant attempts to influence governmental action and that Congress was entitled to conclude that the disclosure provisions were only a partial measure. *Buckley, supra,* 424 U.S. at 27-28, 96 S.Ct. 612. The Court concluded that the Act's contribution limitation "focuses precisely on the problem of large campaign contributions – the narrow aspect of political association where the actuality and potential for corruption have been identified – while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Id.; see also Shrink Missouri, supra,* 528 U.S. at 396, 120 S.Ct. 897; *California Medical Ass'n, supra,* 453 U.S. at 199, n. 20, 101 S.Ct. 2712 (concluding that a limit on the amount that unincorporated associations could contribute to political committees was not required to be the least restrictive means of accomplishing the intent of the statute and that Congress could have reasonably concluded that the statute was a useful supplement to other anti-fraud provisions).

For the same reasons, we also reject the gaming interests' argument that the statute serves no legitimate purpose because other statutes, such as La. R.S. 27:310(B)-(C) already impose rigorous background checks and strict licensing restrictions on gaming interests, guaranteeing that anyone who obtains a gaming interest is "suitable" and honest.

Further, we note that there are significant differences between the video poker industry, as addressed in *Penn,*

and the riverboat and land-based casino gaming industries. For example, there are no limits on the number of persons who may be licensed to operate video poker in this state. In contrast, the Legislature has authorized only a single land-based casino and only 15 riverboats. La. R.S. 27:241 and 27:65. Another notable distinction is that the prohibitions at issue in *Penn* did not apply equally to all persons engaged in the video poker industry. *Penn, supra* at 830 (Johnson, J., concurring). In contrast, the restrictions applicable to those involved in the riverboat and land-based casino gaming industries are uniform.

CONCLUSION

Restrictions on campaign contributions operate in an area protected by the First Amendment, particularly the right of freedom of association. However, a campaign contribution restriction, including a complete ban on campaign contributions, can withstand constitutional scrutiny if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. Thus, under *Buckley* and its progeny, we find that the campaign contribution restrictions on the riverboat and land-based casino gaming industries are closely drawn to match a sufficiently important interest in that they focus precisely on the problem of campaign contributions by the gaming industry – the narrow aspect of political association where the actuality and potential for corruption have been identified – while leaving such persons free to engage in independent political expression, to associate actively

through volunteering their services, and to assist to a substantial extent in supporting candidates and committees by making independent expenditures.[19] Therefore, we find that the provisions of La. R.S. 18:1505.2(L) which prohibit riverboat and land-based casino gaming interests from making campaign contributions to candidates or to political committees of candidates do not violate the First Amendment.[20]

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[19] Having found no First Amendment violation in the provisions of La. R.S. 18:1505.2(L) which prohibit riverboat gaming and land-based casino interests from making campaign contributions, we need not address the argument that the statute conflicts with the "doctrine of unconstitutional conditions." *See 44 Liquormart v. Rhode Island,* 517 U.S. 484, 513, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996).

[20] The riverboat and land-based casino gaming interests also argue that the statutes at issue are violative of the equal protection clause of the Fourteenth Amendment. They argue that the statute respects the right of some persons to associate and speak in support of political candidates, but strips that right from others, i.e., those who work in the gaming industry. The trial court did not address this issue, specifically stating "[h]aving found that La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional [under the First and Fourteenth Amendments], there is no need for this Court to address the Equal Protection arguments of the parties."

Article V, Section 5(F) of the Louisiana Constitution provides that if the Supreme Court has appellate jurisdiction under Section 5, then that jurisdiction *may* extend over all issues involved in the civil action before it. "However, this Court has repeatedly interpreted Article V, Section 5(F) to mean that our appellate jurisdiction does not extend over *all* issues raised in the plaintiff's petition, but only those on which the trial court has ruled." *Cat's Meow, Inc. v. City of New Orleans Through Dept. of Finance,* 98-0601 (La.10/20/98), 720 So.2d 1186, 1199; *Church Point Wholesale Beverage Co. v. Tarver,* 614 So.2d 697 (La.1993). Accordingly, because the trial court specifically did not rule on the allegation that the statute at issue violated the equal protection clause

(Continued on following page)

DECREE

For the foregoing reasons, we reverse the judgment of the trial court and uphold the constitutionality of La. R.S. 18:1505.2(L)(3)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii) and (iii), as well as 42 LA ADC Pt. IX, § 2941, insofar as it applies to the owners of any holding company of the casino gaming operator, their affiliated companies, and all of their officers, directors, partners, senior management and key employees.

REVERSED.

CALOGERO, C.J., dissents and assigns reasons.

KIMBALL, J., dissents and assigns reasons.

JOHNSON, J., dissents and assigns reasons.

CALOGERO, Chief Justice, dissents and assigns the following reasons:

I dissent from the majority's disposition upholding the constitutionality of the certain provisions of La.Rev.Stat. 18:1505.2(L) prohibiting campaign contributions from the riverboat and land-based casino industry because I find this case indistinguishable from our recent decision in *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823, *cert. denied,* 529 U.S. 1109, 120 S.Ct. 1962, 146 L.Ed.2d 793 (2000), in which we declared unconstitutional certain provisions of La.Rev.Stat. 18:1505.2(L) prohibiting campaign contributions by the video poker industry. The

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of the Fourteenth Amendment, this Court is without jurisdiction under Article V to rule on this issue on direct appeal.

provisions at issue in this case, like the provisions at issue in *Penn,* are an absolute prohibition to candidate and political committee contributions by casinos, not merely a limit on such contributions. The provisions thus entirely disallow the symbolic act of contribution. Therefore, as the majority of this court found in *Penn,* I find in this case that the contested provisions' complete prohibition of contributions is more than merely a "marginal restriction" on the casino's First Amendment rights as allowed by *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), and therefore cannot be outweighed by the government's interest in preventing "political corruption."

Furthermore, I do not believe that the United State's Supreme Court's more recent decision of *Nixon v. Shrink Missouri Government PAC,* 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000), is applicable to this case. I disagree with the majority that *Shrink Missouri* sets out the burden of proof that the government must meet in analyzing this particular restriction on campaign contributions. *Shrink Missouri* involved a "contribution limit," not a contribution prohibition, a critical distinction recognized by this court in *Penn.*

Although the majority attempts to distinguish this case from *Penn,* I do not believe a significant distinction exists, and therefore, I believe that the majority's decision effectively overrules our prior jurisprudence on this issue. Because I believe our decision in *Penn* is correct, I respectfully dissent from the majority's decision, and I would find unconstitutional the provisions of La.Rev.Stat. 18:1505.2(L) prohibiting campaign contributions by the riverboat and land-based casino industry.

KIMBALL, Justice, dissenting.

Because I continue to adhere to the view expressed in my concurrence in *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823, 839 (Kimball, J. concurring), I dissent from the majority's conclusion that the provisions at issue are constitutional. Like the provisions held unconstitutional in *Penn,* the instant prohibitions illegally infringe on protected First Amendment rights.

In stark contrast to the laws at issue in *Nixon v. Shrink Missouri Gov't PAC,* 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) and *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam), which dealt with *limits* on campaign contributions, the challenged provisions in the case at bar deal with *absolute prohibitions* on campaign contributions made by certain targeted persons. In *Shrink Missouri,* a case decided after this court rendered its decision in *Penn,* the U.S. Supreme Court quoted language from *Buckley* explaining that a contribution *limit* only marginally restricts a contributor's ability to engage in free communication because while a contribution serves as a general expression of support for the candidate and his views, it does not communicate the underlying basis for the support. *Shrink Missouri,* 528 U.S. at 386, 120 S.Ct. at 903. Further, the *Shrink Missouri* Court quoted *Buckley* for the proposition that

> [t]he quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political

> communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.

Shrink Missouri, 528 U.S. at 386-87, 120 S.Ct. at 903-4 (quoting *Buckley,* 424 U.S. at 20-21, 96 S.Ct. at 635-36). Thus, a contribution limit leaves communication significantly unimpaired. *Shrink Missouri,* 528 U.S. at 387, 120 S.Ct. at 904. Clearly, the *Shrink Missouri* Court did not diminish the importance of the symbolic expression evidenced by a contribution of any amount.

Contribution limits also impinge on protected associational freedoms. *Shrink Missouri,* 528 U.S. at 387, 120 S.Ct. at 904; *Buckley,* 424 U.S. at 22, 96 S.Ct. at 636. Justice Breyer, joined in his concurrence by Justice Ginsburg, noted that the statute upheld by the Court did not impose an absolute ban on contributions. Rather, Justice Breyer stated, it "imposes restrictions of degree. It does not deny the contributor the opportunity to associate with the candidate through a contribution, though it limits a contribution's size." *Shrink Missouri,* 528 U.S. at 401, 120 S.Ct. at 912 (Breyer, J. concurring). Such a statement identifies the difference between a law that limits contributions and one that absolutely prohibits them. In my view, a prohibition against campaign contributions by certain persons allows neither the "symbolic expression" evidenced by a contribution nor the affiliation with a candidate that a contribution allows. This amounts to a "difference in kind" rather than a "distinction in degree" when compared to the laws upheld in *Shrink Missouri* and *Buckley. See Penn,* 751 So.2d at 841 (Kimball, J. concurring).

The majority opinion treats in a cavalier manner the significance of the difference between laws that limit campaign contributions and those that prohibit such contributions. The majority notes that the parties prohibited from making contributions by the provisions at issue can still make unlimited political expenditures, personally assist in a political association's effort on behalf of candidates, urge their employees to support or oppose particular candidates, display yard signs, volunteer in political campaigns, and sponsor phone banks to encourage persons to vote. However, individuals might contribute funds to a candidate's campaign in part because they believe such a contribution is a more effective means of advocacy than spending the money on their own. *See FEC v. Massachusetts Citizens for Life,* 479 U.S. 238, 261, 107 S.Ct. 616, 629, 93 L.Ed.2d 539 (1986); *Beaumont v. FEC,* 278 F.3d 261, 274 (4th Cir.2002). Moreover, given the complete ban on contributions at issue in this case, it seems worthwhile to address the Supreme Court's pronouncement that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Spence v. State of Washington,* 418 U.S. 405, 411 n. 4, 94 S.Ct. 2727, 2731 n. 4, 41 L.Ed.2d 842 (1974) (quoting *Schneider v. State of New Jersey,* 308 U.S. 147, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939)).

The majority correctly recites the standard of review to be used to determine whether the contribution limitations violate the contributor's First Amendment rights, *i.e.,* a contribution limit involving significant interference with associational rights can survive if the Government demonstrates that the contribution regulation is closely drawn to match a sufficiently important interest, but then

fails to accurately apply it to the facts at hand. Because the instant case involves a complete ban on contributions, the State's burden to show that the prohibitive laws are "closely drawn" becomes even more onerous. *Beaumont,* 278 F.3d at 276 ("Yet, when a limit becomes a ban, the burden of demonstrating that the regulation is closely drawn becomes that much more difficult."). In my opinion, the State fails to carry its burden, especially in light of the fact that persons subject to the contribution prohibition at issue are subject to the general contribution limits similar to those upheld in *Buckley* and *Shrink.* Additionally, the State has failed to show why a prohibition, rather than an even lower contribution cap than that allowed by the general law, is necessary.

For all the above reasons and for the reasons I expressed in my concurrence in *Penn,* I must dissent from the majority's holding that the contribution prohibitions at issue are valid.

JOHNSON, J., dissenting.

In *Penn v. State,* 99-2337 (La.10/29/99), 751 So.2d 823,[1] this court declared unconstitutional certain provisions of LSA R.S. 18:1505.2(L) which precluded campaign contributions by *video poker* licensees. Today, the majority has upheld the constitutionality of laws which prohibit *casino* licensees from making campaign contributions. For the reasons expressed in my concurrence in *Penn,* I respectfully dissent.

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[1] *Cert. denied,* 529 U.S. 1109, 120 S.Ct. 1962, 146 L.Ed.2d 793 (2000).

In *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), and more recently in *Nixon v. Shrink Missouri Gov't* PAC, 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000), the United States Supreme Court dealt with the issue of *limitations* on campaign contributions and expenditures. In *Buckley,* the Court stated:

> The [Federal Election Campaign] Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States,* 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498 (1957).... As the Court observed in *Monitor Patriot Co. v. Roy,* 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed.2d 35 (1971), "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

Buckley, 424 U.S. at 14-15, 96 S.Ct. at 632.

As I stated in my concurring opinion in *Penn,* the "acceptance of a [gaming] license does not require the relinquishment of First Amendment rights to free speech and association." 751 So.2d 823, 831 (Johnson, J. concurring). Moreover, under *Buckley* and its progeny, an absolute ban on political contributions by any targeted group should not be allowed. In my mind, such prohibitions are

clearly violative of the First and Fourteenth Amendments to the United States Constitution.

CASINO ASSOCIATION OF LOUISIANA, INC. AND ITS INDIVIDUAL MEMBERS	:	**NUMBER 476, 565, DIVISION F**
VERSUS	:	**19TH JUDICIAL DISTRICT COURT**
STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	:	**PARISH OF EAST BATON ROUGE**
	:	**STATE OF LOUISIANA**

JUDGMENT

(Filed Oct. 30, 2001)

This matter came before the Court for a hearing on October 4, 2001. Representing the plaintiffs was Richard Stanley. R. Greg Sexton and Maris McCrory represented defendant, State of Louisiana. Representing defendant, Louisiana Department of Justice, was Rand Dennis. Intervener, Harrah's Enterprises, was represented by Clifton Laborde. Representing intervener, Treasure Chest Casino, was Jay O'Brien.

After hearing the evidence and testimony, along with arguments of counsel, and for the written reasons set forth herewith;

The law and evidence being in favor of the plaintiffs and interveners;

IT IS HEREBY ORDERED that the judgment is rendered in favor of the plaintiffs and interveners, declaring La. R.S. 18:15005.2(L)(3)(a)(ii) and La. R.S. 18:1505.2 (L)(3)(b)(c)(e), insofar as they are applicable to La. R.S.

18:1505.2(L)(3)(a)(ii), are unconstitutional in that they violate the First and Fourteenth Amendments of the United States Constitution.

THUS DONE AND SIGNED this 30 day of October, 2001, at Baton Rouge, Louisiana.

/s/ T. Kelley
Judge Timothy E. Kelley

CASINO ASSOCIATION OF LOUISIANA, INC. AND ITS INDIVIDUAL MEMBERS	:	**NUMBER 476, 565, DIVISION F**
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STATE OF LOUISIANA, THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	:	**PARISH OF EAST BATON ROUGE**
	:	**STATE OF LOUISIANA**

WRITTEN REASONS FOR JUDGMENT

(Filed Oct. 30, 2001)

This matter came before the Court for a hearing on October 4, 2001. Representing the plaintiffs was Richard Stanley. R. Greg Sexton and Maris McCrory represented defendant, State of Louisiana. Representing defendant, Louisiana Department of Justice, was Rand Dennis. Intervener, Harrah's Enterprises, was represented by Clifton Laborde. Representing intervener, Treasure Chest Casino, was Jay O'Brien. Evidence was introduced, and the parties presented oral arguments. Whereupon, the court took the matter under advisement.

On September 20, 2000, the Casino Association of Louisiana, Inc. and its individual members instituted litigation seeking a declaratory judgment that La. R.S. 18:1505.2(L)(3)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2 (L)(3)(a)(ii), are unconstitutional in that they violated the

First and Fourteenth Amendment of the U.S. Constitution, the Equal Protection guarantees accorded by Article I, Section 3 of the Louisiana Constitution 1974, and Article I, Sections 7 and 9 of the Louisiana Constitution 1974. Harrah's Enterprises, along with Treasure Chest Casino, subsequently intervened in this matter due to their respective interests in the laws that regulate the gaming industry.

In a series of enactments in 1991 and 1992, the Legislature passed four acts providing for the licensing of gaming, providing: a land-based casino in New Orleans, La. R.S. 4:601-696; on cruise ships operating out of New Orleans, La. R.S. 14:90(B); on river boats operating on designated rivers in the state, La. R.S. 4:501-562; and by means of video poker machine [sic] located throughout the state, La. R.S. 33:4962.1-19. *Penn v. State of Louisiana,* 99-2337 (La. 10/29/99), 751 So.2d 823, 849. In 1996, the Louisiana Legislature altered its campaign-finance laws to forbid political contributions by certain classes of persons, labeled "special interests" in the state. The "Campaign Statute", La. R.S. 18:1505.2(L), prohibits political contributions by persons with casino or riverboat gaming interests.

The portions of La. R.S. 18:1505.2(L) applicable to the resolution of this matter provide:

> L. (1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special

interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this subsection is applicable as provided in Paragraph

(3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

* * *

(3) This Subsection shall be applicable to all of the following:

(a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in this Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each

legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

* * *

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

Central to any challenge to the constitutionality of a state statute are the fundamental principals that (1) the constitutionality of a statute is presumed, and that (2) the plaintiff bear the burden, through "clear and convincing evidence," of demonstrating that a Louisiana statute is repugnant to a particular section or phrase of either the State or Federal Constitution. *Polk v. Edwards,* 626 So.2d 1118 (La. 1993).

This matter considers what *Penn v. State of Louisiana* did not address, whether the prohibition on campaign contributions to individual candidates and committees by riverboat and land-based casinos is unconstitutional.

The plaintiffs and intervenors contend that the statute directly abridges the First Amendment freedom of speech by prohibiting a class of persons, namely the casino gaming industry, from contributing money to political candidates of their choice. Plaintiffs and intervenors look to *Penn v. State of Louisiana,* 99-2337 (La. 10/29/99), 751

So.2d 823, as support for their position. In *Penn,* plaintiffs and intervenors argue that the Louisiana Supreme Court held a virtually identical provision of the statute in question here, which prohibited citizens with video poker interests from contributing to political candidates, violated the First and Fourteenth Amendments. *Id.* at 824. The Supreme Court held that provisions of the Campaign Statute and its enabling regulations were facially unconstitutional insofar as they "preclude[d] candidate and political committee contributions by video poker licensees." *Id.* at 823.

The defendants maintain that *Penn* does not dictate this matter. The video poker industry, as addressed in Penn, is very dissimilar from the riverboat and land-based casino gaming industries. In video poker, there are no limits on the number of persons who may be licensed to operate in the state. By contrast, the legislature has authorized only a single land-based casino and fifteen riverboats. La. R.S. 27:247 and La. R.S. 27:65. Therefore, the significance of the participation in the political process by persons in the riverboat and land-based casino gaming industries is considerably enhanced.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The Fourteenth Amendment makes this guarantee applicable to the states as well as Congress. Strict scrutiny analysis applies to any regulation of First Amendment rights. *Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 494 (1981) Laws curtailing the public's right to speak on matters of public concern are, therefore, subject to rigorous analysis under the "strict scrutiny" test. *Penn* at 827,

quoting *Perry Education Association v. Perry Local Educator's Association,* 460 U.S. 37, 45, 103 S.Ct. 948, 955. The First Amendment guarantees freedom of speech, which includes the expressive act of contributing money to political candidates, as well as freedom of association, *Buckley v. Valeo,* 424 U.S. 1, 14, 96 S.Ct. 612 (1976).

A restriction on political speech must be subjected to the most exacting scrutiny, thus, requiring a showing that the "regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." *Perry Education Association v. Perry Local Educator's Association,* 460 U.S. at 45, 103 S.Ct. at 955. The United States Supreme Court has identified one compelling governmental interest that justifies restrictions on campaign financing: "to limit the actuality and appearance of corruption resulting from large individual financial contributions." *Penn* at 827, citing *Buckley,* 424 U.S. at 26, 96 S.Ct. at 638. The defendants in this matter argue that La. R.S. 18:1505.2(L) [sic] stated purpose is to "prevent influence and the appearance of influence of candidates" and therefore, satisfies a compelling government interest.

However, in *Brown,* the Louisiana Supreme Court stated that "[t]he corruption rationale only applies to candidate or candidate committee limitations." *Brown* at 1183, citing *Citizens Against Rent Control,* 454 U.S. at 297, 102 S.Ct. at 438. The Campaign Statute at issue is not merely restricting campaign contributions, but prohibiting contributions by the casino industry. Moreover, the defendants offered no support that the prohibitions in the Campaign Statute will prevent any corruption in the electoral process. In defending a regulation that abridges First Amendment interests, the government "must demonstrate that the recited harms are real, not merely

conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Penn* at 829, citing *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 664, 114 S.Ct. 2245, 2470, 129 L.Ed.2d 497 (1994).

As Chief Justice Calogero stated in *Penn,*

> "In sum, campaign contribution limits aimed at defeating corruption, as the Louisiana statutes [La. R.S. 18:1505.2(L)(a)(i) and La. R.S. 18:1505.2(L)(b)(i)] purport to do, must fit within the exception created by *Buckley* in order to pass constitutional muster. The exception created by *Buckley* permits the State to set reasonable *limits,* applicable to *all* persons, on campaign contributions, for the *sole* purpose of reducing corruption that may result when contributors give large financial contributions in exchange for political favors, *i.e.,* political quid pro quo arrangements. Otherwise, according to *Buckley* and its progeny, campaign contributions are a type of political expression protected by the First Amendment." *Penn* at 833.

The plaintiffs and intervenors maintain the State already has limitations on campaign contributions that would apply to casinos and anyone affiliated with them. Since 1981, Louisiana law has limited the size of campaign contributions that citizens may make to candidates for elective office. La. R.S. 18:1505.2(H)(1)(a). The contributions vary depending on the type of office. The limits range from $1,000 to $5,000. The plaintiffs and intervenors contend this limitation on contributions prevents corruption or the appearance thereof.

Furthermore, plaintiffs and intervenors aver the rigorous background checks and licensing restrictions the

State imposes on gaming interests are intended to address corruption in the gaming industry. In Louisiana, no person can be granted a gaming license without proving that he or she is "suitable." La. R.S. 27:310(B)(1). To be considered suitable, the person must prove that he or she is of "good character, honesty and integrity" and a person whose "prior activities, arrest or criminal record, reputation, habits and association are not a threat to the public interest of the state." La. R.S. 27:310(b)(1)(a) and (b). To stipulate that only honest people, as certified by the State, are eligible for licenses, and then turn around and argue these honest people cannot contribute to political candidates and campaigns because they are "corrupt" appear [sic] contradictory.

The fact that gambling may be characterized as a "vice" does not serve to lessen the First Amendment rights of those involved in its operation. *Penn* at 843. The State cannot justify an infringement on protected First Amendment rights by alleging that the protected rights relate to a "vice" activity when the State itself allow [sic] the so-called "vice" to exist. *Id* at 843. Once a state confers the benefit of legalization upon the gaming industry, it cannot require that industry to surrender its First Amendment rights. *Id* at 843, *44 Liquormart,*517 U.S. 484, 513, 116 S.Ct. 1495, 1513, 134 L.Ed.2d 711 (1996).

Finally, to refute the First Amendment protections afforded to political speech and association, the defendants assert that the speech in this matter is not direct speech, but "speech by proxy." In *Nixon v. Shrink Missouri Government PAC* 98-963, 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000), Justice Stevens, in his concurring opinion stated:

> Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trial, [sic] on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.

The defendants also assert there are ample opportunities for those in the gaming industry to fully develop their First Amendment rights in the political process other than through making campaign contributions to candidates or committees. The gaming entities may urge their employees to support or oppose a particular candidate. Additionally, corporate officers and employees may demonstrate their individual support of candidates by displaying yard signs and doing volunteer work on campaigns. However, in *Penn,* Justice Johnson provided, "Acceptance of a video poker license does not require the relinquishment of First Amendment rights to speech and association." *Penn* at 831. Following the reasoning in *Penn,* there is no basis for the prohibition on a First Amendment right simply because there are other avenues available.

This Court chooses to follow the *Penn* line of reasoning in determining the constitutionality of La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2 (L)(3)(a)(ii). The Campaign Statute amounts to an absolute ban on political contributions by the riverboat and land-based casinos operating in the State. "This absolute ban on political contributions by a particular segment of society goes far beyond what *Buckley* endorsed. The First Amendment simply does not allow the State to target

groups and exclude them from the political process." *Penn* at 831. Consequently, La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional under the First and Fourteenth Amendments of the United States Constitution.

Having found that La. R.S. 18:1505.2(L)(a)(ii) and La. R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applicable to La. R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional, there is no need for this Court to address the Equal Protection arguments of the parties.

THUS DONE AND SIGNED this 30 day of October, 2001, at Baton Rouge, Louisiana.

(Filed Oct. 30, 2001)

CASINO ASSOCIATION OF LOUISIANA, INC. AND ITS INDIVIDUAL MEMBERS	*	NUMBER 476,565 DIVISION F
VERSUS	*	19TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	*	PARISH OF EAST BATON ROUGE
	*	STATE OF LOUISIANA

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AMENDED JUDGMENT

(Filed Nov. 15, 2001)

This matter came before the Court for trial on October 4, 2001. Representing the plaintiffs was Richard C. Stanley. R. Gray Sexton and Maris LeBlanc McCrory represented defendant, State of Louisiana. Representing defendant, Louisiana Department of Justice, was L. Rand Dennis. Intervenors, Harrah's Entertainment, Inc. and Harrah's Operating Company, Inc., were represented by Cliffe E. Laborde III. Representing intervenor, Treasure Chest Casino, was Jay O'Brien.

After hearing the evidence and testimony, along with arguments of counsel, and for the written reasons set forth herewith;

The law and evidence being in favor of the plaintiffs and intervenors;

IT IS HEREBY ORDERED that judgment is rendered in favor of the plaintiffs and intervenors, declaring LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and LSA-R.S. 18:1505.2 (L)(3)(b)(c)(e), insofar as they are applicable to LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and (iii), and 42 LA-ADC Pt. IX, § 2941 insofar as it applies to the owners of any holding company of the casino gaming operator, their affiliated companies and all of their officers, directors, partners, senior management and key employees to be unconstitutional in that they violate the First and Fourteenth Amendments of the United States Constitution.

THUS DONE AND SIGNED this 4th day of ~~November~~ December, 2001, at Baton Rouge, Louisiana.

/s/ T. Kelley
JUDGE TIMOTHY E. KELLEY

U.S. Const. Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

LA R.S. 18:1505.2

§ 1505.2. Contributions; expenditures; certain prohibitions and limitations

A. No person shall give, furnish, or contribute moneys, materials, supplies, or make loans to or in support of a candidate or to any political committee, through or in the name of another, directly or indirectly. This prohibition shall not apply to dues or membership fees of any membership organization or corporation made by its members of stockholders, if such membership organization or corporation is not organized primarily for the purpose of supporting, opposing or otherwise influencing the nomination for election, or election of any person to public office.

B. (1) No candidate, political committee, or other person required to file reports under this Chapter shall make any expenditure from funds the source of which is anonymous, and any contribution received by a candidate, political committee, or other person required to file reports under this Chapter from an anonymous source and deposited shall be reported as provided in R.S. 18:1491.7(B)(19) and R.S. 18:1495(B)(18) and shall escheat to the state and shall be paid over to the state by such candidate, political committee, or other such person.

(2) Any single transaction involving the sale of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials, which transaction is for not in excess of twenty-five dollars and in which transaction the purchaser is not known, shall not be deemed to constitute an anonymous contribution under the provisions of this Subsection.

C. (1) No person shall make a cash contribution to a candidate or a committee and no candidate or committee shall receive cash contributions in excess of one hundred dollars during any calendar year. Any contribution in excess of such one hundred dollar aggregate amount, other than an in-kind contribution, shall be made by an instrument containing the name of the donor and the name of the payee.

(2) Upon receipt of a cash contribution of one hundred dollars or less, the candidate or committee receiving the contribution shall provide to the contributor a receipt for the exact amount of the contribution; such receipt shall contain the name, address, and social security number of the contributor, shall be signed by the contributor, and the candidate or committee receiving the contribution shall retain a copy of the receipt. If the contributor refuses to furnish his name, address, or social security number or refuses to sign the receipt, the contribution shall be immediately returned to said contributor. If the contributor is unable to write, he shall affix his mark to the receipt, and the person receiving the contribution shall affix the name of the incapacitated person to the receipt, provided he does so in the presence of a witness who shall also sign his name as witness to the mark. The copy of the receipt retained by the candidate or committee provided for in this Subsection shall be available to the supervisory

committee for inspection. The supervisory committee shall promulgate rules and regulations relative to the receipt required by this Subsection.

D. (1) No person shall knowingly coerce or attempt to coerce another person to give or withhold a contribution.

(2) No person based on an individual's contribution, promise to make a contribution, or failure to make a contribution shall directly or indirectly affect an individual's employment by means of:

(a) Denial or deprivation or the threat of the denial or deprivation of any employment or position.

(b) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such employment or position.

(c) Discharge, promotion, degradation, or change in any manner in rank or classification, or the threat or promise to do so.

(3)(a) No person based on an individual's contribution, promise to make a contribution, or failure to make any contribution shall directly or indirectly affect an individual by means of:

(i) Denial or deprivation or the threat of the denial or deprivation of membership or participation in any organization.

(ii) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such membership or participation in any organization.

(iii) Discharge, promotion, degradation, or change in any manner in rank, status, or classification in any organization, or the threat or promise to do so.

(b)(i) No organization shall directly or indirectly have as a condition of membership or participation the requirement that a person make a contribution to such organization which will be used by such organization for the purpose of supporting, opposing, or otherwise influencing the nomination or election of any person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer.

(ii) For the purposes of this Subparagraph, "organization" shall have the same meaning as provided for in R.S. 18:1483(6) and shall also include any dues or membership fees of any organization.

(c) For the purposes of this Paragraph, "organization" shall mean a partnership, association, labor union, political committee, corporation, or other legal entity, including its subsidiaries.

(4) No political committee, candidate, or other person shall knowingly and willfully make a contribution or expenditure using funds which were obtained through practices prohibited in this Subsection.

(5) Any contribution received by a candidate, political committee, or other person required to file reports under this Chapter which was obtained through practices prohibited in this Subsection shall be reported as provided in R.S. 18:1491.7(B)(21) and 1495.5(B)(20) and shall escheat to the state and shall be paid over to the state by such candidate, political committee, or other such person.

E. No expenditure in excess of one hundred dollars shall be made from a petty cash fund and no expenditure shall be made from a petty cash fund for any personal services, except for gratuities paid for the serving of food or drink. No expenditure shall be made from the petty cash fund in violation of R.S. 18:1531.

F. No profit or nonprofit corporation, labor organization, or trade, business, or professional association shall make any campaign contribution or expenditure unless specifically authorized to do so whether: by the vote of the board of directors of the corporation, of the executive board of the labor organization or of the trade, business, or professional association at a regular or special meeting thereof; by the president, vice president, secretary, or treasurer of a corporation or labor organization whom the board has specifically empowered to authorize such contributions or expenditures, or, for a corporation, by any other person designated by resolution of the board of directors of a corporation to authorize contributions or expenditures; or by a vote of the membership of the labor organization. No profit or nonprofit corporation, labor organization or trade, business, or professional association shall make any contribution or expenditure, other than an in-kind contribution or expenditure, except by check.

G. No committee shall receive contributions or loans or make expenditures or loans, or make or receive a transfer of funds to or from another committee in the aggregate in excess of five hundred dollars during a calendar year until it has filed the annual statement of organization required by R.S. 18:1491.1. The chairman and the treasurer of any committee which violates the provisions of this Subsection shall be subject to the penalties provided in this Part. No candidate shall make a

contribution to any committee required to file an annual statement of organization by the provisions of R.S. 18:1491.1 which has not filed such a statement.

H. (1)(a) The following contribution limits are established for contributions made to candidates or the principal campaign committee and any subsidiary committee of a candidate for the following offices:

(i) Major office – five thousand dollars.

(ii) District office – two thousand five hundred dollars.

(iii) Other office – one thousand dollars.

(b) The provisions of this Paragraph shall not apply to contributions made to a candidate or the principal or any subsidiary committee of a candidate by a recognized political party or any committee thereof.

(c) Notwithstanding the provisions of Subparagraph (a), the contribution limit for contributions made to an unsuccessful major office candidate, or the principal campaign committee and any subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be ten thousand dollars.

(2)(a) Notwithstanding the provisions of Paragraph (1), the following contribution limits are established for contributions by political committees supporting or opposing a candidate for the following offices:

(i) Major office – five thousand dollars.

(ii) District office – two thousand five hundred dollars.

(iii) Other office – one thousand dollars.

(b) Notwithstanding the provisions of Paragraph (1) and Subparagraph (2)(a) of this Subsection, the following campaign contribution limits are established for contributions by political committees supporting or opposing a candidate for the following offices, the membership of which political committee exceeds two hundred and fifty members as of the December thirty-first of the preceding calendar year, and additionally provided that at least two hundred and fifty of the members have each contributed at least fifty dollars to the political committee during the preceding one-year period:

(i) Major office – ten thousand dollars.

(ii) District office – five thousand dollars.

(iii) Other office – two thousand dollars.

No contribution in excess of the limits contained in Subparagraph (2)(a) of this Subsection shall be made by any political committee until such membership certification is made on the statement of organization form required by this Chapter and timely submitted to the supervisory committee by the applicable due date. Any political committee certified under this Paragraph shall notify the supported candidate in writing at the time any contribution is made under this Paragraph.

(c) If the contribution is made to a committee which is supporting or opposing candidates for different offices, the highest applicable limit shall apply.

(d) The provisions of this Paragraph shall not apply to recognized political parties and their committees.

(e) Notwithstanding the provisions of Paragraph (1) and Subparagraph (2)(a) of this Subsection, the contributions limit for contributions by political committees to an unsuccessful major office candidate, or the principal campaign committee and subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be ten thousand dollars.

(f) Notwithstanding the provisions of Paragraph (1) and Subparagraphs (2)(a) and (b) of this Subsection, the contributions limit for contributions by political committees certified according to the provisions of Subparagraph (2)(b) to an unsuccessful major office candidate, or the principal campaign committee and subsidiary committee of such unsuccessful candidate, who does not participate in the general election and for the time period for which such candidate has a deficit for expenditures made through the day of the primary election, shall be twenty thousand dollars.

(3)(a) For purposes of this Subsection, a primary election and a general election shall constitute two separate elections. For purposes of this Subsection, for candidates and committees that participate in a general election, the reporting period for the general election shall be deemed to begin the day following the primary election.

(b) No person shall make a loan, transfer of funds, or contribution, including but not limited to funds for any purchase of campaign materials for more than twenty-five dollars, funds for the purchase of testimonial tickets, and any in-kind contribution, in the aggregate for all reporting periods for an election, as defined in this Paragraph,

including reporting periods for any supplemental reports required, in excess of the contribution limits established in Paragraphs (1) and (2) of this Subsection, except as otherwise specifically provided in this Subsection.

(c) No candidate including his principal campaign committee and any subsidiary committee thereof, shall accept from the same contributor a loan, transfer of funds, or contribution, including but not limited to funds for any purchase of campaign materials for more than twenty-five dollars, funds for the purchase of testimonial tickets, and any in-kind contribution, in the aggregate for all reporting periods of an election, as defined in this Paragraph, including reporting periods for any supplemental reports, in excess of the contribution limits established in Paragraph (1) of this Subsection, except as otherwise specifically provided in this Subsection, and except that the provisions of Paragraph (2) shall apply for contributions accepted from a political committee. The provisions of this Subparagraph shall not apply to recognized political parties and their committees.

(d) After January 1, 1989, no person shall make a loan, transfer of funds, or contribution to a candidate including his principal campaign committee with funds loaned to him without disclosing to the candidate or his committee the source of the funds. A candidate or his committee receiving such a loan, transfer of funds, or contribution shall not only report the name of the contributor, but also the source of the funds contributed.

(4) The provisions of this Subsection shall not prohibit a transfer of funds between a candidate or his

principal campaign committee and any subsidiary committee thereof, provided that all parties shall comply with applicable reporting requirements.

(5) The provisions of this Subsection shall not apply to any contributions or loans a candidate makes to his own campaign.

(6)(a) For purposes of this Subsection, "loan" shall not include any loan of money by a state bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the Federal Credit Union Administration, any licensed lender under the Louisiana Consumer Law, or an insurance company, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan:

(i) Shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors, and such loan by each endorser and guarantor shall be subject to the contribution limits provided in this Subsection;

(ii) Shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(iii) Shall bear the usual and customary interest rate of the lending institution.

(7)(a) The total amount of combined contributions for both the primary and general elections, from political committees, which may be accepted by a candidate and his

principal and subsidiary campaign committees, shall not exceed the following aggregate amounts:

(i) Major office candidates – eighty thousand dollars.

(ii) District office candidates – sixty thousand dollars.

(iii) Other office candidates – twenty thousand dollars.

(b) The provisions of this Paragraph shall not apply to contributions made by a recognized political party or any committee thereof.

I. (1) On or after January 1, 1991, contributions received by a candidate or a political committee may be expended for any lawful purpose, but such funds shall not be used, loaned, or pledged by any person for any personal use unrelated to a political campaign, the holding of a public office or party position, or, in the case of a political committee, other than a candidate's principal campaign committee or subsidiary committee, the administrative costs or operating expenses of the political committee; except that excess campaign funds may be returned to contributors on a pro rata basis, given as a charitable contribution as provided in 26 USC 170(c), given to a charitable organization as defined in 26 USC 501(c)(3), expended in support of or in opposition to a proposition, political party, or candidacy of any person, or maintained in a segregated fund for use in future political campaigns or activity related to preparing for future candidacy to elective office. However, the use of campaign funds of a candidate or his principal or subsidiary committees to reimburse a candidate for expenses related to his political campaign or his holding of a public office or party position

shall not be considered personal use by the candidate. If a candidate is required by state or federal law to pay taxes on the interest earned by campaign funds of the candidate or any political committee of the candidate, the candidate may use the interest on which such tax is paid for such purpose. A payment from campaign funds shall not be considered as having been spent for personal use when the funds are used to replace articles lost, stolen, or damaged in connection with the campaign.

(2) The provisions of this Subsection shall not apply to campaign funds received prior to July 15, 1988.

(3)(a) A candidate or his principal or subsidiary campaign committee shall not make an expenditure of funds derived from contributions for any purpose so long as the candidate owes a fine, fee, or penalty imposed by a final order of a court or the supervisory committee pursuant to the provisions of this Chapter and against which all appeal delays have lapsed. This Paragraph shall apply to all contributions regardless of the date received by the candidate or committee.

(b) Any person who makes an expenditure in violation of Subparagraph (a) of this Paragraph may be assessed a civil penalty not to exceed two hundred percent of the expenditure or one thousand dollars, whichever is greater.

J. (1) Any candidate, treasurer, or chairman of a political committee who violates any provision of Subsection H or I of this Section shall be assessed a penalty of not more than five thousand dollars or the amount of the violation, whichever is greater, except that the penalty for a knowing and willful violation shall not be more than ten thousand dollars or two hundred percent of the violation,

whichever is greater. "Knowing and willful", for purposes of this Subsection, means conduct which could have been avoided through the exercise of due diligence. The civil penalties provided for in R.S. 18:1505.5 shall be inapplicable to violations of Subsection H or I. Enforcement of Subsections H and I shall be in the same manner provided for in Part VI of this Chapter.

(2) The supervisory committee shall institute civil proceedings to collect the civil penalties provided for in this Subsection as soon as the committee determines, as a result of its review and investigation of any sworn complaint or other document or information received by the supervisory committee, that a violation of Subsection H or I of this Section has occurred. If the supervisory committee makes a determination of such violation at least ten days prior to the election in which the candidate, treasurer, or chairman of a political committee in apparent violation is participating, the supervisory committee shall institute such civil proceedings at least by the fourth calendar day prior to the election.

K. (1) During any four year calendar period commencing January 1, 1991 and every fourth year thereafter, no person shall contribute more than one hundred thousand dollars to any political committee or any subsidiary committee of such political committee, other than the principal or any subsidiary committee of a candidate. Such limitation on a contribution shall not apply to any contribution from a national political committee to an affiliated regional or state political committee.

(2) The provisions of this Subsection shall not apply to contributions made by a recognized political party or any committee thereof.

L. (1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.

(2) No person to whom this Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:

(a)(i) Any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law.[1]

(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming

[1] R.S. 27:301 et seq.

equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act,[2] and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

(iii) Any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act,[3] and any person who owns a casino where such gaming operations are licensed.

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in this Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent or more of each legal entity is owned by the legal entity ownership beneath it.

(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this

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[2] R.S. 27:41 et seq.

[3] R.S. 27:201 et seq.

Paragraph and any officer, director, trustee, or partner thereof.

(c) Any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) of this Paragraph.

(d) Any person subject to the provisions of R.S. 27:63(C)(4), 226(C)(4), or 261(D).

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

(4) This Subsection shall not prohibit an expenditure by a candidate for his own campaign or a contribution, loan, or transfer of funds by a candidate to his own political committee.

(5)(a)(i) Any person who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be assessed a civil penalty in the same amounts as provided in Paragraph J(1) of this Section. The penalties provided in R.S. 18:1505.5 shall not be applicable to any violation of this Subsection.

(ii) If a candidate, committee, or person required to file reports is notified by the supervisory committee that a contribution, loan, or transfer of funds to such candidate, committee, or person was made in violation of this Subsection, such contribution, loan, or transfer of funds shall escheat to the state. Any such contribution, loan, or transfer of funds, or an amount equal thereto, shall be paid over to the state by the recipient candidate, committee, or other person required to file reports within ten business days after the recipient candidate, committee, or

person required to file reports is notified by the supervisory committee that the contribution, loan, or transfer of funds was made by a person prohibited by this Subsection from making such contribution, loan, or transfer of funds.

(b) The supervisory committee shall institute civil proceedings to collect the civil penalties provided for in this Subsection as provided in Paragraph J(2) of this Section.

(c) The criminal penalties provided in R.S. 18:1505.6(C) shall be applicable to any violation of this Subsection.

(d)(i) In addition to all other applicable penalties, the violation of this Subsection by any person to whom the Subsection is applicable pursuant to Paragraph (3) of this Subsection shall be reported by the supervisory committee to the gaming division of the office of state police, the Riverboat Gaming Commission and the board of directors of the Louisiana Economic Development and Gaming Corporation.

(ii) Such a violation of this Subsection shall be prohibited conduct under the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and gaming Corporation Act, and the Video Draw Poker Devices Control Law that renders the violator unsuitable to hold the license which made him subject to the provisions of this Subsection.

(6)(a) The gaming enforcement section of the office of state police of the Department of Public Safety and Corrections, with the technical assistance of the supervisory committee, shall provide written notification of the provisions of this Subsection to each person issued or granted a

permit, license, or contract as provided in Paragraph (3)(a)(i) and (ii) of this Subsection.

(b) The Louisiana Economic Development and Gaming Corporation, with the technical assistance of the supervisory committee, shall provide written notification of the provisions of this Subsection to each person issued or granted a permit, license, or contract as provided in Paragraph (3)(a)(iii) of this Subsection.

M. (1) No foreign national shall, directly or through any other person, make any contribution of money or other thing of value, or promise expressly or impliedly, any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; nor shall any person solicit, accept, or receive any such contribution from such foreign national.

(2) As used in this Subsection, "foreign national" means:

(a) A foreign principal such as a government of a foreign country or a foreign political party, except that "foreign national" shall not mean any individual.

(b) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country, unless authorized and qualified to do business in Louisiana.

(c) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence and accorded the privilege of residing permanently in the United States as an immigrant.

(3)(a) Any person who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be subject to the penalties provided in R.S. 18:1505.5 and R.S. 18:1505.6.

(b) If a candidate, committee, or person required to file reports is notified by the supervisory committee that a contribution, loan, or transfer of funds to such candidate, committee, or person was made in violation of this Subsection, such contribution, loan, or transfer of funds shall escheat to the state. Any such contribution, loan, or transfer of funds, or an amount equal thereto, shall be paid over to the state by the recipient candidate, committee, or other person required to file reports within ten business days after the recipient candidate, committee, or person required to file reports is notified by the supervisory committee that the contribution, loan, or transfer of funds was made by a person prohibited by this Subsection from making such contribution, loan, or transfer of funds.

N. Any interest payments made to a candidate from campaign funds of such candidate or any political committee of such candidate on loans made by the candidate to his campaign or to his political committee shall not be considered as having been spent for personal use to the extent that the interest charged on such loans does not exceed the judicial interest rate at the time the loan was made.

O. (1) The supervisory committee may prohibit a candidate or elected official from using contributions received by, or other campaign funds of, such candidate or elected official or the principal or a subsidiary campaign committee of such candidate or elected official to pay a

fine, fee, or penalty, assessed for a violation of this Chapter upon a finding that the violation was intentional or egregious.

(2) "Intentional" for the purposes of this Subsection shall mean actions which, in the considered opinion of the supervisory committee, were designed to avoid full and accurate compliance with the provisions of this Chapter. "Egregious" for the purposes of this Subsection shall mean actions which, in the considered opinion of the supervisory committee, significantly injured the public's right to full and accurate disclosure of the financing of election campaigns.

La. Admin. Code tit. 42, pt. IX, § 2941. Political Contributions

A. Political Contributions by the Casino Operator, Casino Manager, their employees and their affiliated entities are prohibited in accordance with the Act and the Campaign Finance Disclosure Act (*La. R.S. 18:1481* et seq.) and in particular *La. R.S. 18:1505.2(L)*.

CASINO ASSOCIATION OF LOUISIANA and ITS INDIVIDUAL MEMBERS	*	**SUIT NUMBER: ___ DIV: ___**
VERSUS	*	**19TH JUDICIAL DISTRICT COURT**
STATE OF LOUISIANA THROUGH THE HONORABLE MURPHY J. FOSTER, JR., GOVERNOR, THE HONORABLE RICHARD P. IEYOUB, ATTORNEY GENERAL	*	**EAST BATON ROUGE PARISH**
	*	**STATE OF LOUISIANA**

VERIFIED PETITION FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, come the petitioners, CASINO ASSOCIATION OF LOUISIANA which is a Louisiana corporation, entitled to and domiciled in the State of Louisiana, and THE INDIVIDUAL MEMBERS OF THE CASINO ASSOCIATION OF LOUISIANA, all of whom are licensed by the State of Louisiana as riverboat casino owners or operators, respectfully petition and request this Honorable Court as follows:

1.

Made defendant herein is the State of Louisiana, through the Honorable Murphy J. Foster, Jr., Governor, and the Honorable Richard P. Ieyoub, Attorney General

2.

Petitioner, Casino Association of Louisiana, is a corporation of the State of Louisiana which represents its

member riverboat casinos. Casino Association of Louisiana's corporate existence began on November 1, 1993 when it was known as the Riverboat Casino Association of Louisiana. On or about September 25, 1998 Articles of Reincorporation we [sic] filed in which the Association's name became Casino Association of Louisiana. Casino Association of Louisiana's executive offices are located at 265 Third Street, Baton Rouge, Louisiana 70801. Its membership consists of owners and operators of riverboat casinos within the State of Louisiana. The majority of the riverboat casinos within the State are presently or have in the past been members of Casino Association of Louisiana.

3.

The aforementioned petitioners desire to make or have the opportunity to make campaign contributions to candidates who are running for election or reelection and to the political committees of such candidates or to political committees who otherwise support such candidates.

4.

Petitioners, however, are prohibited from making any such contributions by the applicable provisions of LSA-R.S. 18:1505.2(L). For the reasons discussed hereinbelow and based upon the jurisprudential principles applicable thereto, it is respectfully represented that the LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional in that they are violative of the First and Fourteenth Amendments to the United States Constitution, the Equal Protection guarantees accorded by Article I, Section 3 of the Louisiana Constitution 1974, and

Article I, Sections 7 and 9 of the Louisiana Constitution 1974. Based upon this, it is respectfully requested that this Honorable Court declare LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(iii) unconstitutional.

5.

During the First Extraordinary Session of the Legislature of 1996, the Louisiana Legislature enacted Act 67 (also known as Senate bill 194), which statutory enactment prohibited candidate and candidate political committee campaign contributions of some gaming licensees of the State of Louisiana in state and local elections.

6.

The aforementioned legislative enactment was designated as LSA-R.S. 18:1505.2(L) which provides in pertinent part as follows:

> L(1) The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry.
>
> (2) No person to whom the Subsection is applicable as provided in Paragraph (3) of this Subsection shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, as defined in this

Chapter, to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

(3) This Subsection shall be applicable to all of the following:

(a)(ii) Any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment, including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted.

* * *

(b)(i) Any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a) of this Paragraph. "Interest", as used in the Subparagraph, means ownership by an individual or his spouse, either individually or collectively, of an interest which exceeds ten percent of any legal entity. An indirect interest is ownership through any number of layers of legal entities when twenty-five percent of [sic] more of each legal entity is owned by the legal entity ownership beneath it.

* * *

(b)(ii) Any holding, intermediary, or subsidiary company of any person included in Subparagraph (a) of this Paragraph and any officer, director, trustee, or partner thereof.

* * *

(c) Any officer, director, trustee, partner, or senior management level employee or key employees as defined in R.S. 27:205(19) of any person included in Subparagraph (a) or (b) or this Paragraph.

* * *

(e) The spouse of any person to whom this Subsection is made applicable by this Paragraph.

* * *

(5)(a)(i) Any person who makes a contribution, loan or transfer of funds in violation of this Subsection shall be assessed a civil penalty in the same amounts in Paragraph J(1) of this Section. The penalties provided in R.S. 18:1505.5 shall not be applicable to any violation of this Subsection.

* * *

(c) The criminal penalties provided in R.S. 18:1506.6(C) shall be applicable to any violation of this Subsection.

* * *

(d)(i) In addition to all other applicable penalties, the violation of this Subsection by an [sic] person to whom the Subsection is applicable pursuant to Paragraph (3) of this Subsection shall be reported by the supervisory committee to the gaming division of the office of state police, the Riverboat Gaming Commission and the board of directors of the Louisiana Economic Development and Gaming Corporation.

* * *

(ii) Such a violation of this Subsection shall be prohibited conduct under the Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act, that renders the violation unsuitable to hold the license which made him subject to the provisions of this Subsection.

* * *

(See Exhibit "A", copy of the applicable statute).

7.

Under the provision of the aforementioned legislative enactment, all persons licensed by the Louisiana Gaming Control Board to conduct riverboat gaming, any person who holds a license to conduct gaming activities on a riverboat, pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, any person who owns a riverboat upon which gaming activities are licensed to be conducted, any person who has an interest, directly or indirectly, in any legal entity included in Subparagraph (a)(ii) aforementioned, any holding, intermediary, or subsidiary company of any person included in Subparagraph (a)(ii) aforementioned, and any officer, director, trustee, or partner thereof, any officer, director, trustee, partner, or senior management level employee or key employee as defined in R.S. 27:205(19) of any person included in Subparagraph (a)(ii) or (b)(i)(ii), or this Paragraph, or the spouse of any person to whom this Subsection is made applicable by this Paragraph, who makes a contribution, loan, or transfer of funds in violation of this Subsection shall be assessed a civil penalty in the same amounts in Paragraph J(1) of this Section. The aforementioned persons are prohibited from making campaign

contributions to any candidate or political committee of any such candidate.

8.

It is firmly established in the jurisprudence that merely because a person participates in an industry that may be regulated pursuant to a state's police power, the state is not empowered via a state's police powers to invade fundamentally protected rights under the guise of regulation of this activity.

9.

The statutory scheme which establishes the legitimate nature of riverboat gaming and riverboat casino businesses in the State of Louisiana indicates that the licensing of individuals and corporate entities for riverboat gaming and riverboat casino operations is a privilege. The U.S. Supreme Court jurisprudence is clear that this statutes [sic] do not lessen the First Amendment protections that are accorded to any such persons so licensed to participate in riverboat gaming activities. The conferral of such a benefit to any person may not be conditioned upon the surrender of a constitutional right or any part thereof.

10.

The federal and Louisiana jurisprudence has long recognized that the prohibition of an individual from making a contribution or expenditure to a candidate or political committee of that candidate is recognized as implicating fundamental and protected rights of the First Amendment which safeguard an individual's right to

freedom of association and the right to freedom of expression.

11.

The U.S. Supreme Court has long held that the freedoms associated with First Amendment guarantees are safeguarded from abridgement and unwarranted invasion via state action by the Due Process Clause of the Fourteenth Amendment.

12.

These First and Fourteenth Amendment associational freedoms have been held to guarantee the freedom [sic] a person to associate with others for the common advancement of political beliefs and ideas which associational freedom encompasses the right to associate with the political part [sic] of one's choice.

13.

It has further been held that contribution and expenditure limitations operate in an area of the **most fundamental** First Amendment activities.

14.

Based thereupon, it is an established jurisprudential principle that government action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

15.

The U.S. Supreme Court has previously held that these principles regarding First Amendment associational protections are equally applicable to corporations and that the mere fact that an organization is a corporation does not remove its speech from the ambit of the First Amendment.

16.

In accordance with the principles discussed in the foregoing regarding **limitations** of contributions to candidates and political committees of candidates, the U.S. Supreme Court, has identified only a single narrow exception to the rule that **limits** on political activities are contrary to the First Amendment. This exception serves [sic] protect the public confidence in the political process and to reduce the perception of undue influence of large contributors to a candidate or the political committee of that candidate. It has long been established in the jurisprudence that the prevention of corruption or the appearance of corruption are the only legitimate and compelling government interest [sic] thus far that would suffice to limit and restrict First Amendment freedoms.

17.

Prior to the enactment of Act 67, the State had already taken precautions to limit the corruptive effects of large individual campaign contributions in a constitutional manner by enacting LSA-R.S. 18:1505.2(H)(1)(a). This constitutional statutory mechanism serves to protect the State and the public's interest regarding corruption or the appearance of corruption of the political process through

undue influence of large contributors to a candidate or the political committee of that candidate.

18.

The Louisiana Election Code at LSA-R.S. 1505.2(H)(1)(a) limits candidate and candidate political committee campaign contributions by any and all persons to certain amounts for certain elections. Based thereupon, all citizens of this state are prohibited from contributing more than the statutorily delineated amounts in any state election.

19.

The Louisiana Election Code at LSA-R.S. 18:1505.2(H)(1)(a) provides specifically and more fully as follows:

> The following contribution limits are established for contributions made to candidates or the principal campaign committee and any subsidiary committee of a candidate for the following offices:
>
> (i) Major office – five thousand dollars.
>
> (ii) District office – two thousand five hundred dollars.
>
> (iii) Other office – one thousand dollars.

20.

The jurisprudential principle regarding the propriety of **limitations** on campaign contributions recognizes that there is a substantial governmental interest in **limiting** contributions to candidates or their political committees because of the actual corruption that may result from a

candidate's dependence on large individual contributors and to the extent that these large contributions are given to secure a political *quid pro quo* it was recognized that the integrity of our system of representative democracy would be undermined.

21.

Because the state of Louisiana has enacted a general provision of the Louisiana Election Code at LSA-R.S. 18:1505.2(H)(1)(a) which limits contributions that any and all persons may make to a candidate or political committee of any candidate, any state interest in preventing actual or apparent corruption of candidates through their dependence on large individual contributors simply does not exist and cannot be used as a justification for First Amendment restrictions on persons associated with the gaming industry in the form of a campaign contribution prohibition imposed by LSA-R.S. 18:1505.2(L)(3)(a)(ii)(iii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c)(e), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(iii).

22.

Under the statutory limitations enacted in the Louisiana Election Code at LSA-R.S. 18:1505.2(H)(1)(a), it is legally impossible to effect a *quid pro quo* by any person associated with the gaming industry to any greater degree than a person associated or licensed in some other regulated business because all are limited to making the same contribution amount.

23.

In light thereof, the State cannot justify a further restriction which would impose an absolute **prohibition** of candidate and political committee campaign contributions by a singular element of riverboat casino licensees and persons owning a percentage of those riverboats.

24.

Moreover, it is even further inconceivable how such a basis as the prevention of corruption would or could be used to support the enactment of LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c)(e), insofar as they are applied when the State requires all riverboat casino applicants, and the owners as well as all officers, directors, trustees, partners, senior management level employees, or key employees as defined in 27:205(19) of any person included in § a or b of LSA-R.S. 18:1505.2(L) thereof to meet onerous suitability criteria and to undergo a detailed and lengthy licensing process prior to licensing for gaming activities.

25.

Each applicant for a license to conduct riverboat gaming is investigated by the Louisiana State Police, the investigatory arm of the Louisiana Gaming Control Board, for anywhere from four months to six, or more months before a license is issued if all suitability criteria are determined to have been met. The suitability documentation is likewise required for all officers, directors and managerial employees of any such business licensed to operate riverboat casinos.

26.

The statutory scheme which governs the regulation of riverboat casinos in Louisiana provides at LSA-R.S. 27:311(E) as follows:

> No license shall be issued by the division except upon receipt of a sworn application and a finding by the division that the applicant, the application, and all persons described in R.S. 27:310 meet the requirements of that Section.

27.

The aforementioned statutory provision refers to the criteria for licensing for riverboat gaming and riverboat casino activities that are contained in LSA-R.S. 27:310 which in pertinent part are as follows:

* * *

> B. (1) No person shall be granted a license under the provisions of this Chapter unless the applicant has demonstrated to the division that he is suitable for licensing. For purposes of this Chapter, suitability means the applicant of licensee is:
>
> (a) **A person of good character, honesty, and integrity.**
>
> (b) **A person whose prior activities, arrest or criminal record if any, reputation, habits, and associations do not pose a threat to the public interest of this state** or to the effective regulation of riverboat gaming and riverboat casinos, and do not create or enhance the dangers of unsuitable, unfair, or illegal practices,

methods, and operations in the activities authorized by this Chapter and financial arrangements incidental thereto.

(C) Likely to conduct business as authorized by this Chapter in complete compliance with the provisions of this Chapter (emphasis supplied).

* * *

28.

It is untenable for the State to certify that licensed, qualified riverboat casino owners, operators and key employees are persons of good character, honesty, and integrity whose reputation, habits, and associations do not pose a threat to the public interest of this state, yet to enact a statute aimed at prohibiting their ability to contribute campaign contributions to candidates or political committees of candidates in order to prevent corruption or the appearance of corruption of the political process.

29.

Because such a position is untenable, it is by definition unconstitutional and clearly violative of one's First Amendment associational right to participate in the electoral process via candidate and committee contributions in the political process.

30.

Furthermore, there is no U.S. Supreme Court, other federal jurisprudence, or jurisprudence of this state which supports the contention that a singular segment of the

business community or the public in general may be **prohibited** from making campaign contributions.

31.

There is no U.S. Supreme Court, other federal jurisprudence, or jurisprudence of this state which identified a state interest that is sufficient to support the prohibition of candidate or political committee contributions by a singular segment of the business community or the public in general.

32.

The applicable federal jurisprudence has held that total bans on campaign contributions are generally unconstitutional.

33.

The U.S. Supreme Court has held that when the government defends a regulation of speech as a means to redress past harms or prevent anticipated harms, it must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way. The State in this matter cannot do so.

34.

In light of the Louisiana statute LSA-R.S. 18:1505.2(H)(1)(a) which limits candidate and political campaign contributions for **all persons**, along with the strict background investigation of all applicants prior to licensing, and the

certification by the State that these persons are suitable and reputable persons, there is no rational or reasonable basis, much less a compelling state interest, nor any factual scintilla of evidence nor any case law to support a campaign finance prohibition on certain persons licensed in the riverboat casino industry in Louisiana.

35.

Moreover, there is no jurisprudential principle upon which the state can rely to justify the prohibition of any element of the riverboat casino industry from making campaign contributions to candidates and the political committees of candidates and therefore, LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c), insofar as they are applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are clearly repugnant to established First Amendment freedoms and have no place in our democratic system of government.

36.

In light of the established principles of jurisprudence discussed in the foregoing, it is clear that the prohibition imposed by the challenged statute and regulation impinge on these firmly established fundamental rights.

37.

Accordingly, as the First Amendment rights of the petitioners herein to freedom of association and expression have been impinged as a result of the legislative pronouncements contained in LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(c), insofar as they are

applied [sic] LSA-R.S. 18:1505.2(L)(3)(a)(ii), unconstitutionally prohibiting candidate and political committee campaign contributions by the petitioners, and based thereupon, these statutory provisions should, accordingly, be declared unconstitutional for the reasons discussed in the foregoing.

38.

Furthermore, and in the alternative, LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(iii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are violative of the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article 1, Section 3 of the Louisiana Constitution.

39.

The petitioners in the present matter are accorded protections of certain fundamental rights under the Fourteenth Amendment to the United States Constitution which may not be impinged or the object of deprivation barring a showing by the State of Louisiana that the deprivation or impingement of that fundamental right serves some compelling state interest or objective.

40.

LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2 (L)(3)(b)(c), insofar as they are applied to LSA-R.S. 18:1505.2 (L)(3)(a)(ii), discriminate against only certain persons who are licensed to conduct gaming activities on a riverboat, any person who owns a riverboat upon which gaming activities are licensed to be conducted, any person with a

10% or greater interest in a riverboat casino, any holding, intermediary, or subsidiary company of a riverboat casino owner or operator, including any officer, director, trustee or partner of such a company, and any officer, director, trustee, partner, senior management or key employee of a riverboat casino.

41.

There are 14 licensed establishments that are riverboat gaming casinos and the maximum number of licenses for riverboat gaming casinos allowed under law within the state of Louisiana is 15.

42.

There is a large number of persons who are licensed as officers, directors, trustees, partners, senior management level employees, key employees.

43.

It is inconceivable how the state can rationally justify a restriction on campaign contributions that limits the associational freedoms of a large number of riverboat gaming casino licensees on the basis of the prevention of corruption or the appearance of corruption but except some other gaming licensees from these campaign restrictions.

44.

Other gaming industries such as the lottery, indian gaming and charitable gaming are not subjected to this

prohibition on contributions to candidates and political committees of candidates. In fact no other regulated businesses whose conducting of business activities likewise is dependant upon the conferral of a license by the State of Louisiana is [sic] prohibited from making campaign contributions. In fact, some businesses, such as utility companies can even contribute to the campaigns of Public Service Commission members who regulate the rates that utility companies can charge the general public.

45.

It seems untenable to assert that a state interest or objective is achieved which is sufficient to justify this particular scheme of discrimination that mutes the political voices of the members of this highly regulated riverboat casino industry, but allows the vast majority of others who are similarly licensed in gaming, such as video poker and in other regulated businesses, to remain free to participate in the political process, unhindered and unencumbered by any legislative or regulatory prohibition. The reasoning of the State in enacting LSA-R.S. 18:1505.2 (L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(ii)(iii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), if any, is not compelling nor constitutionally sufficient.

46.

Because the state had previously enacted campaign contribution limitations applicable to all persons contained in LSA-R.S. 18:1505.2(H)(1)(a), the State cannot establish any interest, much less a compelling state interest, that is required to overcome the presumption that the challenged provisions, LSA-R.S. 18:105.2(L)(3)(a)(ii) and LSA-R.S.

18:1505.2(L)(3)(b)(ii)(iii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are violative of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

47.

The aforementioned analysis and result should be dispositive and determinative of the unconstitutional nature of the statute and regulation under Article 1, Section 3 of the Louisiana Constitution of 1974 as state constitutions cannot be interpreted to afford less protection than the federal Constitution as such an interpretation would violate the federal Supremacy Clause.

48.

In fact, from providing merely the same standard of equal protection as accorded by the U.S. Constitution, the Louisiana Constitution of 1974 has been interpreted by the jurisprudence of this state to provide greater equal protection rights than are accorded under the Fourteenth Amendment to the U.S. Constitution.

49.

Thus, if the equal protection clause of the Louisiana Constitution provides even greater protection than that of the U.S. Constitution, and LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutional under the applicable equal protection analysis under the Fourteenth Amendment, then it is only logical to conclude that the challenged statutory and regulatory

provisions are unconstitutional under Article 1, Section 3 of the Louisiana Constitution of 1974.

50.

Accordingly, as the First Amendment rights of the petitioners herein to freedom of association and expression have been impinged as a result of the legislative pronouncements contained in LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), which provisions unconstitutionally prohibit candidate and political committee campaign contributions by petitioners, these statutory provisions should, accordingly, be declared unconstitutional for the reasons discussed in the foregoing.

51.

Moreover, and in addition to the aforementioned, LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), are unconstitutionally overbroad, which over breadth constitutes a violation of the First and Fourteenth Amendments to the United States Constitution and Article 1, Sections 7 and 9 of the Louisiana Constitution.

52.

A challenge as to the overbreadth of a statute or regulation is appropriate when the particular statutory or regulatory provision is so broad that it acts as an impediment to the exercise of protected and privileged First Amendment rights.

53.

An overbreadth challenge is a facial challenge to the validity of a statute or regulation, and as such a reviewing court does not review the challenged provision "as applied" to the petitioner, but rather tests the constitutionality of the provisions in terms of their potential applications.

54.

With regard to the challenged statutes, LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii) and (c), of Act 67 of the First Extraordinary Session of the Legislature of 1996, petitioners herein respectfully aver that, the scope of the conduct that is impermissibly prohibited far exceeds the limit of constitutionally protected conduct that may properly be proscribed by the state regarding campaign contribution limitations.

55.

The above referenced statutes prohibit all campaign contributions to any candidates and any political committees of candidates by qualified individuals who hold a license to conduct gaming activities on a riverboat, any person who owns a riverboat upon which gaming is licensed to be conducted, any person who has at least a 10% interest of any riverboat casino or license to conduct gaming activities; any holding, intermediary or subsidiary company of a riverboat owner or operator, any officer, director, trustee or partner of such a company and any officer, director, trustee, partner, senior management level employee or key employee of a riverboat which is licensed for gaming.

56.

As discussed in the foregoing, it is established in the applicable jurisprudence that this campaign contribution prohibition far exceeds the scope of constitutional acceptability.

57.

Therefore, in light of the foregoing, it is clear that LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), of Act 67 of the First Extraordinary Session of the Legislature of 1996, act as an impediment to the exercise of the protected and privileged First Amendment rights of petitioners herein.

58.

Accordingly, and based upon the principles of jurisprudence discussed in the foregoing, these challenged statutory provisions should be declared unconstitutionally overbroad.

59.

In addition, petitioners, the Individual Members of Casino Association of Louisiana are licensees of the Board as defined in § 107 of Title 42 Part XIII of the Louisiana Administrative Code and as such, are precluded from making a loan, contribution, or expenditure to or on behalf of any political committee or a candidate's political committee (see copy of text of § 107 of Title 42 Part XIII of the Louisiana Administrative Code, made a part hereof for all purposes and attached hereto as Exhibit "B").

60.

For the reasons discussed hereinabove and based upon the jurisprudential principles applicable thereto, it is respectfully represented that § 107, insofar as § 107 precludes candidate and political committee contributions and expenditures by casino operators or licensees, is unconstitutional in that it is violative of the First and Fourteenth Amendments to the United States Constitution and Equal Protection guarantees accorded by the [sic] Article 1, Section 3 of the Louisiana Constitution [sic] 1974 and is unconstitutionally overbroad.

61.

This identical issue has been addressed by the Louisiana Supreme Court with regard to the prohibition placed upon video poker device owners and others who are licensed within the video poker industry.

62.

In the case of *Penn, et al v. State of Louisiana, et ux*, 99-2337 (La. 10/29/99) 751 So. 2d 823, the Louisiana Supreme Court held that LSA-R.S. 18:1505.2(L)(3)(a)(i) and LSA-R.S. 18:1505.2(L)(b)(i) insofar as it applied to LSA-R.S. 18:1505.2(L)(3)(a)(i) were declared unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution and § 107 of Title 42 Part XIII of the Louisiana Administrative Code, insofar as it precluded candidate and political committee contributions by video draw poker licensees was declared invalid.

63.

The language and prohibitions which were declared unconstitutional in the case of video poker licensees is virtually identical to the language and prohibitions challenged in the present petition. The *Penn, et al v. State of Louisiana, et ux* case is attached hereto as Exhibit C, and should be applicable to this case.

WHEREFORE, petitioners pray:

I. That citation issue and service be made upon the State of Louisiana, through the Honorable Murphy J. Foster, Governor, and the Honorable Richard P. Ieyoub, Attorney General.

II. The LSA-R.S. 18:1505.2(L)(3)(a)(ii) and LSA-R.S. 18:1505.2(L)(3)(b)(i)(ii)(c), insofar as it is applied to LSA-R.S. 18:1505.2(L)(3)(a)(ii), and § 107 of Title 42 Part XIII of the Louisiana Administrative Code, insofar as § 107 precludes candidate and political committee contributions and expenditures by riverboat casino operators or licensees, be declared unconstitutional for the reasons stated hereinabove; and,

III. For all other equitable relief to which petitioner may be entitled.

Respectfully submitted,

LUNN, IRION, SALLEY, CARLISLE & GARDNER
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By: /s/ Charles W. Salley
CHARLES W. SALLEY,
Bar Roll No. 11664

By: /s/ Julia A. Mann
JULIA A. MANN,
Bar Roll No. 18319

ATTORNEYS FOR PETITIONERS,
CASINO ASSOCIATION OF LOUISIANA and ITS INDIVIDUAL MEMBERS

PLEASE SERVE:

State of Louisiana
through Honorable Murphy J. Foster, Governor
State Capital, 4th Floor
Baton Rouge, LA 70804

State of Louisiana
Department of Justice
through Attorney General Richard Ieyoub
State Capitol, 22nd Floor
Baton Rouge, LA 70804

VERIFICATION

STATE OF LOUISIANA

PARISH OF CADDO

BEFORE ME, the undersigned Notary Public, personally came and appeared:

CHARLES C. BARHAM

who, being first duly sworn, did depose and say that he is a person of the full age of majority and a domiciliary of the State of Louisiana and further that he is the Executive Director of the Casino Association of Louisiana; that he

has read the foregoing Verified Petition for Declaratory Judgment and examined all of the exhibits attached thereto; and that all of the allegations of fact contained therein are true and correct to the best of his knowledge, information and belief.

/s/ Charles C. Barham
Charles C. Barham

SWORN TO AND SUBSCRIBED before me in Baton Rouge, East Baton Rouge Parish, State of Louisiana on this the 18th day of September, 2000.

/s/ Tom Withers III
NOTARY PUBLIC

La. Admin. Code. tit. 42, pt. IX, § 2941

§ 2941. Political Contributions

A. Political Contributions by the Casino Operator, Casino Manager, their employees and their affiliated entities are prohibited in accordance with the Acts and the Campaign Finance Disclosure Act (*La. R.S. 18:1481* et seq.) and in particular *La. R.S. 18:1505.2*(L).